



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2004

Ms. Lois Cochran  
Records Coordinator  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033-0677

OR2004-6464

Dear Ms. Cochran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206275.

The City of Cleburne (the "city") received a request for information pertaining to twelve specified criminal cases. You indicate that you have provided the requestor with some of the requested information. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted police report numbers 203572, 201207, and 2201343 are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You indicate that these particular reports pertain to closed criminal investigations in which no criminal charges were filed. Accordingly, we agree that section 552.108(a)(2) applies to these particular reports. We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976)

(summarizing types of basic information that must be made available to public, to include detailed description of offense).

Generally, the identity of a complainant must be released as basic information. However, information tending to identify an alleged victim of sexual assault is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>1</sup> See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We further note that information is also protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *id.* at 683. Accordingly, we conclude that the city must withhold portions of the basic information, which we have marked, from police report numbers 201207 and 2201343 pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. However, the city must release to the requestor the remaining basic information from these two particular reports, as well as the entirety of the basic information from police report number 203572. The city may withhold the remaining information from all three of these reports pursuant to section 552.108(a)(2) of the Government Code. We note that the city maintains the discretion to release all or part of the information from these particular reports that does not constitute basic information to the extent that such information is not otherwise confidential by law. See Gov't Code § 552.007.

You claim that the remaining submitted police reports are excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. Section 552.101 also encompasses information that is protected from disclosure by other statutes. Section 58.007 provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. See Fam. Code § 58.007. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Based on your representations and our review of the remaining submitted information, we agree that this information is confidential under section 58.007 of the Family Code. It does not appear that any exceptions to confidentiality apply in this instance. Accordingly, we conclude that the city must withhold the remaining submitted information pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, the city must withhold portions of the basic information, which we have marked, from police report numbers 201207 and 2201343 pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The city must release to the requestor the remaining basic information from these two particular reports, as well as the entirety of the basic information from police report number 203572. The city may withhold the remaining information from all three of these reports pursuant to section 552.108(a)(2) of the Government Code. The city must withhold the remaining submitted information pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 206275

Enc. Marked documents

c: Mr. James M. Stanley  
2200 Hemphill Street  
Fort Worth, Texas 76110  
(w/o enclosures)