



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2005

Ms. Sharon Hicks
City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79602-0060

OR2005-08369

Dear Ms. Hicks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 232254.

The Abilene Police Department (the "department") received two requests from the same requestor for information pertaining to three specified incidents.¹ You inform us that the department does not maintain some of the requested information.² You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.³ This section encompasses the doctrine of common-law privacy, which

¹We note that the department failed to submit a copy of the second request within the time period prescribed by section 552.301 of the Government Code. See Gov't Code § 552.301(e)(1)(B) (governmental body must submit copy of written request for information within fifteen business days of receiving the request). However, we note that the second request for information does not seek additional information beyond what was sought in the first request. Because the department timely submitted a copy of the first request, we conclude that the department has met its procedural obligations under section 552.301.

²The Act does not require a governmental body to release information that did not exist when the request for information was received or to prepare new information in response to a request for information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

³The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. *Id.* at 683. In Open Records Decision Number 393, this office concluded that, generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common-law privacy.

You inform us that case number 02-18468 was the subject of a previous request for information, in response to which this office issued Open Records Letter Number 2002-6617 (2002). You inform us that the status of that case has not changed. We note that Open Records Letter Number 2002-6617 addressed a case involving sexual assault. The requestor in that instance had a special right of access to information tending to identify the sexual assault victim in that report. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). However, the requestor here does not have a special right of access to such information. Thus, the department must withhold the sexual assault victim's identifying information in case number 02-18468. See *Indus. Found.*, 540 S.W.2d 668; Open Records Decision Nos. 393 (1983); 339 (1982). With regard to the remaining information at issue in case number 02-18468, as the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the department may continue to rely on our decision in Open Records Letter Number 2002-6617 with respect to the information that was previously ruled upon in that decision.⁴

Next, we address your claim under section 552.108 of the Government Code with respect to the submitted information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us that the submitted information pertains to a criminal investigation that concluded in a result other than

⁴The four criteria for this type of "previous determination" are (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable. However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). 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). Furthermore, as mentioned above, information tending to identify a sexual assault victim is subject to common-law privacy. *See Indus. Found.*, 540 S.W.2d 668; Open Records Decision Nos. 393 (1983); 339 (1982). The submitted report pertains to allegations of sexual assault. Therefore, the department must withhold the type of information we have marked that would identify or tend to identify the victim.

To summarize: (1) because the requestor here does not have a special right of access to such information, the department must withhold the sexual assault victim's identifying information in case number 02-18468 pursuant to section 552.101 of the Government Code and common-law privacy; (2) with regard to the remaining information at issue in case number 02-18468, the department may continue to rely on our decision in Open Records Letter Number 2002-6617 with respect to the information that was previously ruled upon in that decision; (3) other than basic information, the department may withhold the submitted records under section 552.108(a)(2) of the Government Code; (4) the department must withhold the type of information we have marked in the submitted records that would identify or tend to identify the sexual assault victim pursuant to section 552.101 and common-law privacy; and (5) the department must release the remaining basic information in the submitted documents.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 232254

Enc. Submitted documents

c: Ms. Anna Camp
Fort Worth Weekly
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Fort Worth, Texas 76102
(w/o enclosures)