



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

December 27, 2005

Lt. Oscar J. Garcia  
Central Records Division  
Weatherford Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2005-11606

Dear Lt. Garcia:

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# 238767.

The McAllen Police Department (the "department") received a request for numerous specific cases. You state that you have released some of the requested information. You claim that a portion of the requested 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 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states that the offense reports for which it has raised section 552.108(a)(1) are ongoing investigations. However, case numbers 2002-00015035 and 2002-00040628 involve charges of aggravated assault which occurred in excess of three years prior to this request being made. The statute of limitations for aggravated assault is three years from the date of the commission of the offense. Code Crim. Proc. art. 12.01. The department has not explained

how or why release of documents relating to these two cases would interfere with the investigation of offenses for which the statute of limitations has run. Thus, because the department has not shown the applicability of section 552.108(a)(1) to these two offense reports, we conclude that it may not withhold reports number 2002-00015035 and 2002-00040628 under section 552.108(a)(1).

With respect to the other cases for which the department has raised section 552.108(a)(1), we conclude that release of these case reports would interfere with the investigation of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. — Houston [14th Dist.] 1975, writ ref'd n.r.e.) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the case reports for which it has raised section 552.108(a)(1) of the Government Code with the exception of case numbers 2002-00015035 and 2002-00040628.

The department asserts that the remaining submitted documents are excepted under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if. . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Thus, section 552.108(a)(2) protects information that relates to concluded criminal investigations or prosecutions that did not result in 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 conviction or deferred adjudication.

You state that the submitted information for which you raise section 552.108(a)(2) pertains to cases that did not result in conviction or deferred adjudication because the case was either dismissed, no billed by a grand-jury, the victim would not cooperate, or the victim did not wish to press charges. Based on these representations, we agree that section 552.108(a)(2) is generally applicable to the remaining submitted information. However, case number 2001-27972 indicates that the defendant received one year of community service. A criminal defendant may be placed on community supervision where 1) criminal proceedings are deferred without an adjudication of guilt or 2) the defendant has been convicted and the resulting sentence is suspended in whole or in part. *See* Code Crim. Proc. art. 42.12, § 2(2) (defining “community supervision”).

In light of the fact that the records before us indicate that the investigation resulted in either a conviction or a deferred adjudication, we cannot reconcile this apparent conflict with your section 552.108(a)(2) claim. Consequently, the department may not withhold the documents relating to case number 2001-27972 from the requestor based on section 552.108(a)(2). However, the department may withhold the remaining submitted information pursuant to section 552.108(a)(2).

We note that subsections 552.108(a)(1) and 552.108(a)(2) do 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 Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.— Houston [14th Dist.] 1975, writ ref'd n.r.e.). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. See *Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). However, as some of the submitted information pertains to a sexual assault, certain basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.<sup>1</sup>

Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information that tends to identify a victim of sexual assault is protected under common law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982); *Morales v. Ellen*, 840 S.W.2d 519 (Tex App.— El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Thus, the department must withhold information identifying the individual who was sexually assaulted in case number 2001-00026147 pursuant to section 552.101 of the Government Code in conjunction with common law privacy. All other basic information must be released.

We note that some of the remaining information contains Texas motor vehicle information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The department must withhold the Texas motor vehicle information we have marked under section 552.130.

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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." Gov't Code § 552.101.

We further note that the remaining submitted information contains social security numbers of arrestees and other individuals. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the social security numbers contained in the submitted information under section 552.147.<sup>2</sup>

In summary, with the exception of case reports 2002-00015035, 2002-00040628, and 2001-27972, the department may withhold the remaining case reports under section 552.108 of the Government Code. However, basic information must generally be released. The identifying information we have marked within the basic information of case number 2001-00026147 must be withheld under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130. The social security numbers of arrestees and other living individuals must be withheld under section 552.147. The remaining information must be released

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

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<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/jh

Ref: ID# 238767

Enc. Submitted documents

c: Mr. Juan Ramos  
124 East Cano Street  
Edinburg, Texas 78539  
(w/o enclosures)