



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2006-02684

Dear Ms. Joe:

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# 244290.

The Travis County Sheriff's Office (the "sheriff") received a request for "the file for Case 05-27984." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code 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 state that the submitted information pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is applicable to the submitted records.

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 Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 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, including detailed description of offense). You claim, however, that some of the basic information is confidential and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common law right to privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. 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. 540 S.W.2d at 683. Information may also be withheld under section 552.101 in conjunction with common law privacy upon a showing of certain "special circumstances." See Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

You contend that all basic information that identifies the victims should be withheld under the general doctrine of common law privacy. In support of your contention, you note that this office has held that the identity of a sexual assault victim is generally protected under the doctrine of common law privacy. See Open Records Decisions Nos. 393 (1983), 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). We note that while this office generally does consider a sexual assault victim's identity to be confidential under the doctrine of common law privacy, we generally do not extend the same protection to victims of other non-sex-related offenses. In this instance, the crime in question is not a sexual assault or other sex-related offense. Furthermore, we find that you have not otherwise demonstrated that any of the basic information is highly intimate or embarrassing. Therefore, the sheriff may not withhold any of the basic information under the general doctrine of common law privacy.

You also assert that all basic information regarding the whereabouts of the victims, including the address where officers were dispatched, should be protected based on special circumstances.¹ You contend that release of this information would endanger the victims' safety. Based on your representations and our review of the submitted information, we find

¹We note that a victim's or complainant's address is generally not considered basic information unless the address is the location of the crime, the place of arrest, or the premises involved.

that the release of information revealing the whereabouts of the victims would likely cause the victims to face an imminent threat of physical danger. Accordingly, this information, which we have marked, must be withheld under section 552.101 of the Government Code. With the exception of the remaining basic information, the sheriff may withhold the remainder of the submitted information under section 552.108 of the Government 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, 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 244290

Enc. Submitted documents

c: Ms. Christina Rogers
c/o Julie Joe
Travis County
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(w/o enclosures)