



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2006

Ms. Patricia E. Carls
Brown & Carls, L.L.P.
City Attorney, City of Georgetown
106 East 6th Street, Suite 550
Austin, Texas 78701

OR2006-04775

Dear Ms. Carls:

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# 248490.

The Georgetown Police Department (the "department"), which you represent, received a request for calls for service and incident reports relating to specified addresses from September 1, 2005 to January 31, 2006. You state that most of the requested information has been released to the requestor, but claim that the submitted 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 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in

an investigation under this chapter or in providing services as a result of an investigation.

Because Exhibit B consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You inform us that the department has not adopted any rules that govern the release of this type of information. We conclude that the department must withhold Exhibit B pursuant to section 552.108 in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

Section 552.108(a) 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). You state that Exhibit D relates to a pending criminal investigation. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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 indicate, and the documents show, that the reports in Exhibit C each concluded in a result other than a conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to Exhibit C.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. We note that basic information includes a detailed description of the offense and the identification and description of the complainant. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). In this instance, however, some of the basic information is confidential under the doctrine of common law privacy as expressed in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. *Indus.*

Found., 540 S.W.2d at 683. In addition, information that tends to identify a sexual assault victim is protected by common law privacy and must be withheld pursuant to section 552.101 of the Government Code. *See id.* at 668, 683-85 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). Generally only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under 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) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information). We have marked the type of information that is protected under the doctrine of common law privacy and which may not be released as basic information. The basic information which is not protected under the doctrine of common law privacy must be released. The remainder of Exhibit D may be withheld under section 552.108(a)(1) of the Government Code and the remainder of Exhibit C may be withheld under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold Exhibit B pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. The department must also withhold the information we have marked in Exhibits C and D pursuant to section 552.101 in conjunction with common law privacy. The department must release the basic information that is not protected under the doctrine of common law privacy. The remainder of Exhibit D may be withheld under section 552.108(a)(1) and the remainder of Exhibit C may be withheld under section 552.108(a)(2) 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 248490

Enc. Submitted documents

c: Ms. Naomi C. Walker
Executive Director
Georgetown Housing Authority
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(w/o enclosures)