



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 9, 2007

Mr. David C. Newell  
Assistant County Attorney  
Fort Bend County Attorney's Office  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

OR2007-05534

Dear Mr. Newell:

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# 282746.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information relating to two specified cases. You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.<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."<sup>2</sup> This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common-law right of privacy if the information contains highly intimate or embarrassing facts, the publication of which

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See Gov't Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>2</sup> Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See Gov't Code* §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

would be highly objectionable to a reasonable person, and the information is not of legitimate concern to the public. *See id.* at 668.

In Open Records Decision No. 393 (1983), this office concluded that generally only that 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; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. *See* Open Records Decision No. 393 at 2; *see also* Open Records Decision No. 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 that was not a matter of legitimate public interest); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, report number 04-16713 is related to an alleged sexual offense, and the requestor knows the identity of the crime victim. Under these circumstances, withholding only identifying information from the requestor would not preserve the victim’s common-law right to privacy. We therefore conclude that the department must withhold report number 04-16713 in its entirety under section 552.101 in conjunction with common-law privacy.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information that it seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 04-6228 is related to a pending case. Based on your representation, we conclude that section 552.108(a)(1) is applicable in this instance. *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 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information includes the identity of the complainant and a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). However, because report number 04-6228 also is related to an alleged sexual offense, the sheriff must withhold the identity of the crime victim under section 552.101 in conjunction with common-law privacy. We have marked the type of information that must be withheld. With the exception of the victim’s identity, the sheriff must release basic information in accordance with section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records

Decision No. 127 at 3-4. The sheriff may withhold the rest of the information in report number 04-6228 under section 552.108(a)(1).

In summary: (1) the sheriff must withhold report number 04-16713 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the sheriff may withhold report number 04-6228 under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c); and (3) in releasing basic information, the sheriff must withhold the identity of the victim under section 552.101 in conjunction with common-law privacy.<sup>3</sup>

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

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<sup>3</sup>As we are able to make these determinations, we do not address your other arguments against disclosure, except to note that section 552.103 of the Government Code generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jb

Ref: ID# 282746

Enc: Submitted documents

c: Mr. Erich L. Schenk  
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(w/o enclosures)