



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2007

Ms. Katherine M. Powers  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2007-07029

Dear Ms. Powers:

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# 280245.

The Dallas Police Department (the "department") received a request for copies of "any and all reports involving" a named individual, including a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that some of the submitted information does not pertain to the named person or the specified incident, and thus, is not responsive to the instant request. Information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling.

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<sup>1</sup> To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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.” Gov’t Code § 552.108(a)(1). 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal prosecution. Based on your representations and our review, we determine that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime.<sup>2</sup> *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).

As you acknowledge, 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*. 531 S.W.2d at 186-87. Basic information normally includes the identification and description of the complainant. Open Records Decision No. 127 (1976). In this instance, the submitted information involves a sexual assault. Generally, information tending to identify sexual assault victims is protected by common-law privacy and must be withheld pursuant to section 552.101 of the Government Code. Gov’t Code § 552.101 (excepts information made confidential by law, either constitutional, statutory, or by judicial decision, and encompasses common-law privacy); *see Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). Accordingly, any information identifying the sexual assault victim must be withheld under section 552.101 in conjunction with common-law privacy. The remaining basic information must be released. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

The requestor in this instance, however, is a representative of the Texas Department of Family and Protective Services (“DFPS”) who asserts that the requested information pertains to an open case with DFPS. Section 48.154 of the Human Resources Code provides in pertinent part:

- (a) The department or state agency, as appropriate, shall have access to any records or documents, including client-identifying information and medical and psychological records, necessary to the performance of the department’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure.

of services to an elderly or disabled person. A person or agency that has a record or document that the department or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the department or agency.

Hum. Res. Code § 48.154. Thus, to the extent DFPS is seeking the information to perform its duties under chapter 48, DFPS has a right of access to the submitted information, and it must be released to this requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

In summary, to the extent that DFPS is seeking the information to perform its duties under chapter 48, DFPS has a right of access to the submitted information, and it must be released to this requestor. Otherwise, with the exception of basic information, which must be released, the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold information identifying the sexual assault victim pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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).

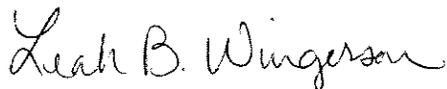
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/sdk

Ref: ID# 280245

Enc. Submitted documents

c: Ms. Brittany Peyton  
Texas Department of Family and Protective Services  
2700 Ben Avenue  
Fort Worth, Texas 76103  
(w/o enclosures)