



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 29, 2008

Ms. Patrica E. Carls
Carls, McDonald & Dalrymple, LLP
Barton Oaks Plaza 2
901 South Mopac Expressway, Suite 500
Austin, Texas 78746

OR2008-02789

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# 303447.

The Georgetown Police Department (the "department"), which you represent, received a request for all incident reports from October 26, 2007 pertaining to a named officer. 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.

Initially, we note that most of the submitted information, which we have marked, is not responsive to this request. The department need not release nonresponsive information in response to this request and this ruling will not address that information.

We note that some of the requested information appears to have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-01777 (2008). To the extent that information responsive to the current request is identical to the information previously requested and ruled upon by this office, and the law, facts, and circumstances on which the prior ruling was based have not changed, the department may continue to rely on that ruling as a previous determination and withhold or release any such information in accordance with Open Records Letter No. 2008-01777. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which

prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not identical, we will consider your arguments.

Section 552.108 of the Government Code provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) 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;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108. A governmental body claiming section 552.108 must reasonably explain how and why the release of the information at issue would interfere with law enforcement or prosecution. *See id.* §§ 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 all of the submitted reports are "either related to pending cases and the law enforcement agencies have stated that release of the information would interfere with the detection, investigation, or prosecution of crime; or it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication." You indicate that a criminal prosecution is pending with regard to one of the specified reports. Therefore, we understand you to claim section 552.108(a)(1) for this report. Based on your representation, we conclude that section 552.108(a)(1) is applicable to information relating to this report. We also understand you to represent that the remaining information pertains to investigations that did not result in a conviction or deferred adjudication. Accordingly, we find that the remaining information is subject to section 552.108(a)(2).

We note, however, that basic information, which is normally found on the front page of an offense report, is generally considered public and not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In Open Records Decision No. 649 at 3 (1996), this office concluded that information contained in Computer-Aided Dispatch ("CAD") reports is substantially the same as basic information specifically held to be public in *Houston Chronicle* and therefore is not excepted from public disclosure under section 552.108. *See also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and thus, such information is generally public). A portion of the submitted information consists of dispatch reports; therefore, as basic information, these reports, which we have marked, cannot generally be withheld under section 552.108 of the Government Code. However, upon review we find that some of the basic information is protected by common-law privacy under section 552.101 of the Government Code. We will address this exception to disclosure for the basic information. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex.*

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. *Id.* at 683. In addition, this office has found that the identities of victims of sexual abuse or other sex-related offenses are excepted from public disclosure under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108 of the Government Code. The department must, however, withhold the basic information we have marked under section 552.101 in conjunction with common-law privacy. The remaining submitted 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

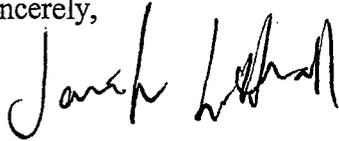
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 303447

Enc. Submitted documents

c: Ms. Isadora Vail
Austin American Statesman
Williamson County Bureau
203 East Main Street
Round Rock, Texas 78664
(w/o enclosures)