



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2008

Mr. Clark T. Askins
Askins & Askins P.C.
P.O. Box 1218
La Porte, Texas 77572-1218

OR2008-12010

Dear Mr. Askins:

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# 320426.

The La Porte Police Department (the "department"), which you represent, received a request for all incident reports involving a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted information may be subject to section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy and excepts from disclosure private facts about an individual. *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 (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. *Id.* at 685.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Report numbers 1-07-026766 and 1-08-008184 relate to alleged sexual assaults. Generally, only information tending to identify victims of serious sexual offenses is protected by common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In this instance, the request indicates that the requestor knows the identity of the alleged sexual assault victim listed in the reports at issue. Thus, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, report numbers 1-07-026766 and 1-08-008184 would ordinarily be withheld in their entirety under section 552.101 in conjunction with common-law privacy. We note, however, that the requestor may be the authorized representative of the individual at issue. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(b). If the department determines that the requestor does not have a right of access to this information pursuant to section 552.023, then the department must withhold report numbers 1-07-026766 and 1-08-008184 in their entireties under section 552.101 in conjunction with common-law privacy. If the department determines that the requestor is the authorized representative of the individual at issue and has a right of access pursuant to section 552.023, then the department may not withhold report numbers 1-07-026766 and 1-08-008184 based on the privacy interests of the victim. The department may, however, raise exceptions to disclosure that are not designed to protect an individual's privacy interests. Accordingly, we will address the department's argument under section 552.108 of the Government Code for report numbers 1-07-026766 and 1-08-008184 as well as for the remaining submitted reports.

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." *Id.* § 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted reports relate to pending criminal investigations. Based upon this representation and our review, we conclude that release of the submitted reports 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). Thus, section 552.108(a)(1) is applicable to the submitted reports.

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. Thus, the department must release basic information, including the identification of the complainant and a detailed description of the offense, 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 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information pursuant to section 552.108(a)(1).

In summary, if the department determines that the requestor is not the authorized representative of the named individual, then the department must withhold report numbers 1-07-026766 and 1-08-008184 in their entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the department determines that the requestor is the authorized representative of the named individual, then with the exception of basic information which must be released, the department may withhold report numbers 1-07-026766 and 1-08-008184 under section 552.108(a)(1).² With the exception of basic information, the department may also withhold the remaining submitted reports under section 552.108.

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). If the governmental body does not file suit over 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).

²If the department determines that the requestor is the authorized representative of the named individual and the department receives another request for this same information from a different requestor, then the department should again seek a decision from this office.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/mcf

Ref: ID# 320426

Enc. Submitted documents

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(w/o enclosures)