



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2008

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2008-12303

Dear Mr. Reinwand:

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# 321263.

The Arlington Police Department (the "department") received a request for two specified reports. 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 Open Records Decision No. 393 (1983), this office concluded that although generally only information that either identifies or tends to identify a victim of a sexual assault or other sex-related offense is confidential under common-law privacy, the governmental body was required to withhold the entire police report because the identifying information was inextricably intertwined with other releasable information. *See* Open Records Decision No. 393 at 2 (1983); *see also* Open Records Decision Nos. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld), 339 (1982) (sexual assault victim has common-law privacy interest that prevents disclosure of information that would identify the victim). We note that report number 08-21254 pertains to an alleged sex-related offense. In this case, the requestor knows the identity of the alleged victim. We therefore find that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We note, however, that the requestor is the stepfather of the individual whose privacy interest is at issue. Therefore, if the requestor is the authorized representative of the individual at issue, then pursuant to section 552.023 of the Government Code, the requestor has a right of access to report number 08-21254 and it must be released to him. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor does not have a right of access to this information pursuant to section 552.023, then the department must withhold report number 08-21254 under section 552.101 of the Government Code in conjunction with common-law privacy.

You assert that report number 08-43655 is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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." *Id.* § 552.108(a)(1). 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 report number 08-43655 relates to a pending criminal investigation. Based on this representation and our review of the information at issue, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crimes. *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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that 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. The department must release basic information, including a detailed description of the offense and arrest information, even if this information does not literally appear on the front page of an offense or arrest report. *See id.* at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information

deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report number 08-43655 under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is the authorized representative of the alleged victim in report number 08-21254, then pursuant to section 552.023 of the Government Code, the requestor has a right of access to this information and it must be released to him. If the requestor does not have a right of access to this information pursuant to section 552.023 of the Government Code, then the department must withhold report number 08-21254 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold report number 08-43655 under section 552.108(a)(1) 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 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).

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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/mcf

Ref: ID# 321263

Enc. Submitted documents

c: Mr. Henry Dorris
P.O. Box 1764
Arlington, Texas 76004
(w/o enclosures)