



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 20, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2009-00724

Dear Ms. Byles:

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# 332975 (PIR No. 0425-09).

The City of Fort Worth (the "city") received a request for a police report relating to the arrest of a named individual. 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 have reviewed the information you submitted.¹

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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and have provided an affidavit stating, that the submitted information is related to a pending criminal prosecution. 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).

¹We note that a social security number and Texas motor vehicle information have been redacted from the submitted documents pursuant to section 552.147 of the Government Code and previous determinations issued to the city under section 552.130 of the Government Code. *See* Gov't Code §§ 552.147, .301(a); Open Records Decision No. 673 (2001) (previous determinations).

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. The city must release basic information, including 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*).

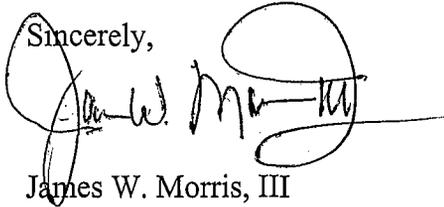
You seek to withhold some of the basic information in the submitted report under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In Open Records Decision No. 169 (1977), this office concluded that under certain "special circumstances," common-law privacy will protect information that ordinarily would be subject to public disclosure. *Id.* at 6-7. Such "special circumstances" encompass a very narrow set of situations. *Id.* at 6. They do not include a desire for privacy or "a generalized and speculative fear of harassment or retribution." *Id.* "Special circumstances" do include situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." *Id.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7.

In this instance, you seek to withhold information relating to a police officer who was involved in the arrest. You explain that the officer in question frequently works in an undercover capacity. You contend that the release of the officer's name and identification number would compromise his effectiveness as an undercover officer and expose him to potential revenge by individuals whom the officer has previously been involved in arresting and/or convicting. Based on your representations, we conclude that the information that you have highlighted, as well as the references to the officer that we have marked, must be withheld from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of that information, basic information must be released. The city may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large, circular flourish at the beginning and a horizontal line extending to the right.

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

JWM/eb

Ref: ID# 332975

Enc: Submitted documents

c: Requestor
(w/o enclosures)