



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2009.

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-02037

Dear Mr. Phillips:

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# 334965 (City of Fort Worth Request No. 0728-09).

The City of Fort Worth (the "city") received a request for information relating to a specified incident, including a specified General Order. You state that the responsive General Order has been released to the requestor. You claim that the submitted police report 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 552.108(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). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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 a letter from the Tarrant County District Attorney's Office (the "district attorney") stating, that the submitted police report is related to a pending criminal prosecution. The district attorney asserts that release of this information would interfere with the prosecution of the case. Based on your representation and the district attorney's letter, 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 réf'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident).

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*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that the names of arresting and investigating officers are considered basic information.

In this instance, you seek to withhold the highlighted names of the investigating officers who are also undercover officers under section 552.101 of the Government Code. 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 section encompasses the common-law right to privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

You state that release of the highlighted information, which identifies undercover officers, would not only compromise the effectiveness of these individuals as undercover officers, but would likely cause the officers to face imminent threat of physical danger. Based on your representations and our review, we agree that the city must withhold the highlighted information under section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy.

In summary, except for basic information, the city may withhold the submitted report under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the information you have highlighted under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 334965

Enc. Submitted documents

c: Requestor
(w/o enclosures)