



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2009

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

OR2009-02393

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# 335714 (Fort Worth PIR No. 0902-09).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You state that Texas motor vehicle information has been redacted from the submitted documents pursuant to previous determinations issued to the city under section 552.130 of the Government Code in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).<sup>1</sup> You claim that the remaining 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

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<sup>1</sup>See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations).

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, while generally only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy, because the identifying information in that case was inextricably intertwined with other releaseable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex.App.—El Paso, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). We note that report number 07-5004 pertains to an alleged sexual assault. In this case, the requestor knows the identity of the alleged victim in report number 07-5004. 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 conclude that the city must withhold report number 07-5004 pursuant to section 552.101 in conjunction with common-law privacy.<sup>2</sup>

We now turn to the city's arguments under section 552.108 of the Government Code. 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 release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit from the Fort Worth Police Department reflecting, that the report number 07-4996 relates to a pending criminal case. Based on this representation, we conclude that releasing this information 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). Accordingly, we agree that section 552.108(a)(1) applies to report number 07-4996.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *Houston*

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<sup>2</sup>As our ruling on this information is dispositive, we need not address your remaining argument against disclosure.

*Chronicle*, 531 S.W.2d 177; see also Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold report number 07-4996 pursuant to section 552.108.

In summary, the city must withhold report number 07-5004 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report number 07-4996 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](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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 335714

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)