



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 5, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-02895

Dear Ms. De La Garza:

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# 336536.

The Houston Police Department (the "department") received a request for a specified offense report. You state some information will be released. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 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). While you acknowledge that one of the suspects named in the report has been convicted in this matter, you state that the investigation remains ongoing as it pertains to the other listed suspects. You further assert that the release of the submitted information would interfere with the pending criminal investigation. Based upon these representations, we conclude that the release of the submitted report 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). Therefore, we agree that section 552.108(a)(1) of the Government Code is generally applicable to the submitted information.

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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). The department seeks to withhold the identities of an informant and undercover police officers. We note that basic information includes the identification and description of the complainant and the names of arresting and investigating officers, but does not include the identification and description of witnesses. *See Houston Chronicle*, 531 S.W.2d at 187; ORD 127 at 3-4. Thus, the department may withhold the informant's identity under section 552.108(a)(1). However, because information pertaining to investigating and arresting officers is considered basic information, we will determine whether the department must withhold the undercover officers' identities under section 552.101 of the Government Code in conjunction with common-law privacy.

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. This exception encompasses the doctrine of common-law privacy, which protects information that (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 in conjunction with common-law privacy on a showing of "special circumstances." This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." ORD 169 at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You state the submitted information contains the identifying information of undercover vice officers. You have submitted an affidavit stating that the release of those officers' identifying information would endanger the officers and persons working with or assisting them, such as confidential informants. Based on the affidavit, we conclude the department must withhold the identifying information of the undercover vice officers under section 552.101 in conjunction with common-law privacy.