



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2009

Mr. Steven R. Guy
The Norman Law Firm
P.O. Box 1870
Jacksonville, Texas 75766

OR2009-10493

Dear Mr. Guy:

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# 350539.

The Alto Police Department (the "department"), which you represent, received a request for probable cause statements, long-form complaints, sworn affidavits, or any evidence turned into the Cherokee County Grand Jury in the indictment of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Although you cite to section 552.305 of the Government Code with respect to your argument that some of the submitted information implicates an individual's privacy rights, that provision is not an exception to disclosure. We note the proper exception to claim for an individual's constitutional or common-law rights to privacy is section 552.101 of the Government Code.

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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[.]” Gov’t Code § 552.108(a)(1). Generally, 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, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided an affidavit from the Cherokee County District Attorney’s Office (the “district attorney”) stating, that the submitted information relates to pending criminal investigations being conducted by the district attorney. Based on your representations and our review, we determine that the release of the submitted 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, section 552.108 is applicable to the submitted information.³

We note 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*, and includes, among others, a detailed description of the offense, the location of the offense, and the identification and description of the complainant. *See* 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Here, however, the complainant’s identifying information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.12 of the Penal Code.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information protected by other statutes, such as section 21.12(a) of the Penal Code. *See* Gov’t Code § 552.101. Section 21.12(a) provides that a public or private school employee commits an offense if the employee engages in “sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works and who is not the employee’s spouse[.]” Penal Code § 21.12(a)(1). We further note that section 21.12(d) provides that “[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.” *Id.* § 21.12(d). Thus, the name of the student allegedly involved in an improper relationship with an educator is confidential under section 21.12, and must be withheld from the basic information under section 552.101 of the Government Code.

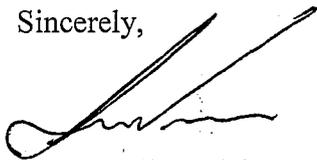
³As our ruling is dispositive, we need not address your argument under section 552.108(b) of the Government Code.

In summary, with the exception of basic information, the submitted information may be withheld under section 552.108(a)(1). In releasing basic information, the department must withhold the name of the student at issue under section 552.101 in conjunction with section 21.12 of the Penal Code. The remaining basic information must be released.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 350539

Enc. Submitted documents

c: Requestor
(w/o enclosures)