



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2009

Mr. Robert Massey
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2009-13686

Dear Mr. Massey:

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# 356782 (City ID# 187).

The City of Wichita Falls (the "city") received a request for information pertaining to a specified incident. You claim that the submitted 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 report.

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, 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). The type of information 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 this case, the submitted report pertains to the investigation of an alleged sexual assault. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy. However,

a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

You claim the submitted report is confidential pursuant to common-law privacy. We note, however, that the requestor is the alleged victim of the sexual assault. Section 552.023 of the Government Code gives a person a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as the subject of the information. *See* Gov't Code § 552.023. Thus, the requestor has a special right of access to her own information pursuant to section 552.023, and the submitted report may not be withheld in its entirety. *See id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We note the submitted report includes the identifying information of another alleged victim of sexual assault; however, the requestor does not know the identity of this victim. Thus, the city must generally withhold this victim's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

You also raise section 552.108 of the Government Code for the submitted information, which provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108 protects certain specific types of law enforcement information. Section 552.108(a)(1) is applicable if release of the information would interfere with a pending criminal investigation or prosecution. *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). Section 552.108(b)(1) is applicable to internal records of a law enforcement agency, the release of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body that raises section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted report relates to a pending criminal investigation. However, we note the report involves a sexual assault that allegedly occurred in 1984. The statute of limitations for the offense described in the report is ten years. *See Penal Code § 22.011(f); Crim. Proc. Code art. 12.01(2)(E)* (indictment for sexual assault must be presented within ten years from date of commission of offense). You have neither informed this office any criminal charges were filed within the limitations period nor have you explained how release of the submitted report would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has not run. Thus, we find that you have not demonstrated that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Gov't Code § 552.108(a)(1)*. Likewise, you have not explained how or why release of the submitted report would interfere with law enforcement or crime prevention. *See id.* § 552.108(b)(1). We therefore conclude that the city may not withhold the submitted report under section 552.108 of the Government Code.

In summary, the city must only withhold the identifying information of the alleged victim who is not the requestor, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further arguments against disclosure of the remaining information, it must be released.¹

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

¹We note because the requestor has a special right of access to some of the information at issue in this instance, the city must again seek a decision from this office if it receives another request for the same information from a requestor without such a right of access.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 356782

Enc. Submitted documents

cc: Requestor
(w/o enclosures)