



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
Police Legal Advisor
321 John Sartain Street
Corpus Christi, Texas 78401

OR2009-17504

Dear Ms. Aguilar:

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# 363979.

The Corpus Christi Police Department (the "department") received a request for the police reports pertaining to nine listed event numbers. You state you released some of the requested information. You also state five of the listed event numbers do not have related reports.¹ You submitted some pages from three incident reports, the marked portions of which you claim are 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.

You first assert the marked portions of report numbers 0909200096 and 0909200122 are excepted under section 552.108 of the Government Code, which 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

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 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). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). You state the information you marked under section 552.108 relates to an active criminal case that is pending investigation or prosecution. The submitted reports, however, pertain to different criminal incidents. You do not indicate, and the submitted documents do not reflect, what the ongoing investigation is about or whether either submitted report is the subject of this investigation. Further, you do not explain how the release of information pertaining to two different incidents would interfere with the investigation of one particular case. Accordingly, the department has failed to establish that release of the marked information in report numbers 0909200096 and 0909200122 would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code § 552.301(e)(1)(A)* (governmental body must explain how claimed exception to disclosure applies). Therefore, the department may not withhold the marked information under section 552.108.

You also marked a police officer’s badge number under section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Id. § 552.1175(a)(1), (b). The marked badge number does not relate to the home address, home telephone number, or social security number of the officer at issue, and does not reveal whether the officer has family members. Thus, section 552.1175 is inapplicable to the marked badge number, and the badge number may not be withheld.

You next claim the marked portions of report number 090920069 are excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section 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). 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. *See* Open Records Decision Nos. 393 (1983), 339 (1982). You have not explained, however, how the alleged victim's birthdate is identifying in this instance. Accordingly, with the exception of the alleged victim's birthdate, you must withhold the identifying information you marked under section 552.101 in conjunction with common-law privacy. The remaining 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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 363979

Enc. Submitted documents

cc: Requestor
(w/o enclosures)