



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2009

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-18438

Dear Mr. Mann:

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# 365954 (GCA 09-0801).

The Garland Police Department (the "department") received a request for a specified police report. 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 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). You state that the submitted information marked in red relates to an ongoing criminal investigation. Based on this representation and our review, we conclude that the release of 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. 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). Thus, the

department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code.¹

You claim that the remaining information is excepted from disclosure in its entirety under common-law privacy. Section 552.101 of the Government Code excepts from public 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 if it (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). Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when the requestor knows the identity of the alleged victim. See ORD 393. We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Although you seek to withhold the remaining information in its entirety, you have not demonstrated, nor does the information reflect, that the requestor knows the identity of the alleged sexual assault victim. Thus, the department may not withhold the remaining information in its entirety under section 552.101 in conjunction with common-law privacy. However, we agree that portions of the remaining information are highly intimate or embarrassing and of no legitimate public interest. Accordingly, we conclude that the department must withhold the remaining information you have marked in blue, except for the information we have marked for release, under section 552.101 in conjunction with common-law privacy. However, the remaining information you have marked in purple is not intimate or embarrassing or is of legitimate public interest. We further note that the remaining information you have marked in orange pertains to an individual who has been de-identified. Accordingly, we find that privacy interests are not implicated by the release of the information you have marked in orange. Thus, the department may not withhold any of the remaining information marked in purple and orange under section 552.101 and common-law privacy.

In summary, the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked in blue, except for the information we have marked for release, under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 365954

Enc. Submitted documents

c: Requestor
(w/o enclosures)