



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 20, 2010

Mr. Mark G. Daniel
Evans, Daniel, Moore & Evans
For City of Watauga
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2010-00925

Dear Mr. Daniel:

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# 372277 (PIA Requests Numbers 09-543, 09-551, and 09-552).

The Watauga Police Department (the "department"), which you represent, received three requests from the same requestor for information related to a specified incident. You state that some responsive information has been released to the requestor. You claim 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 of the Government Code excepts from public 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state the submitted report is related to a pending criminal case. Based on this representation and our review, we conclude section 552.108(a)(1) is applicable in this instance. *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).

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). Section 552.108(c) refers

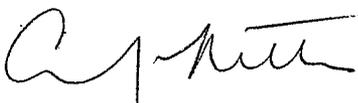
to the basic front-page information held to be public in *Houston Chronicle*. We note basic information includes the identity of the complainant and a detailed description of the offense. ~~See Open Records Decision No. 127-at-3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).~~ You assert that information identifying the complainant, who was the victim of an alleged sexual assault, is private and must be withheld under section 552.101 of the Government Code in conjunction with common law privacy.¹

Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 tends to identify a victim of sexual assault is protected under common law privacy. *See* Open Records Decision No. 339 (1982). Upon review, we find the department must withhold from basic information any information identifying the complainant under section 552.101 of the Government Code in conjunction with common law privacy. Except for the remaining basic information, the department may withhold the submitted report under section 552.108(a)(1) of the Government Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

¹Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

Ref: ID# 372277

Enc. Submitted documents

c: Requestor
(w/o enclosures)