



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2010

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2010-01437

Dear Ms. Sandoval-Walker:

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# 368916.

The El Paso Police Department (the "department") received a request for information pertaining to specified incidents involving the requestor and another named individual. You state you have released some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.108, 552.130, and 552.147 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 incident report number 09-116041 relates to a pending investigation and prosecution. Based on this representation, we conclude that the release of incident report number 09-116041 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). However, you have failed to adequately explain how the remaining reports in Exhibit B relate to the pending investigation and prosecution. Consequently, section 552.108(a)(1) is not applicable to this information. Therefore, the department may not withhold the remaining reports under section 552.108(a)(1) of the Government Code.

We note that 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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. Therefore, with the exception of basic information, the department may withhold incident report number 09-116041 pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup>

We note portions of incident report number 09-033061 are subject to section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup> 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. 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). The types 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. Upon review, we find a portion of the information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked in incident report number 09-033061 under section 552.101 in conjunction with common-law privacy.<sup>1</sup>

In summary, with the exception of basic information, the department may withhold incident report number 09-116041 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in incident report number 09-033061 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.

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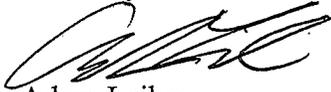
<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 368916

Enc. Submitted documents

c: Requestor  
(w/o enclosures)