



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-03462

Dear Ms. De La Garza:

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# 373405.

The Houston Police Department (the "department") received three requests from the same requestor for the complete personnel records of two named individuals and records pertaining to a named individual. 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.

Initially, we note you have not submitted any information relating to the requested personnel records of two named individuals. We assume, to the extent this information existed when the department received the request for information, you have released it to the requestor. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. 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). In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the request indicates the requestor knows the identity of the alleged victim in Exhibit 3. Therefore, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, we agree the department must withhold Exhibit 3 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit 2 pertains to a criminal investigation that concluded in a dismissal of the charges against the suspect in the matter and did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to Exhibit 2.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). The department must release basic information under section 552.108(c), which includes, among others, the identity of the complainant. Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note, in this instance, the portion of the basic information identifying the complainant is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

As previously discussed, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. In this instance, the complainant in Exhibit 2 is a victim of an alleged sexual assault. Information that either identifies or tends to identify a victim of

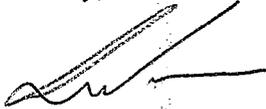
sexual assault must be withheld under common-law privacy. ORD 393 at 2; ORD 339; *see also Morales*, 840 S.W.2d 519. Therefore, the department must withhold the complainant's identifying information in Exhibit 2 under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold Exhibit 3 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, the department may withhold Exhibit 2 under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 373405

Enc. Submitted documents

c: Requestor
(w/o enclosures)