



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2010

Ms. Jordan Hale
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2010-04947

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 375264 (PIR No.10-27041).

The Office of the Attorney General (the "OAG") received a request for information pertaining to criminal cause numbers CR-01316, CR-01317, and CR-01318. The OAG asserts the information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.130 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.¹ We have also received and considered the requestor's submitted comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

First, the OAG asserts section 552.101 of the Government Code in conjunction with common-law privacy protects all of the information because the requestor knows the identity of the alleged sexual assault victim. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common law right of privacy if the information (1) 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.*, 540 S.W.2d 668.

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) (identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Thus, this office has held when a requestor knows the identity of the alleged sexual assault victim, an agency must withhold all of the information because withholding only the identifying information would not preserve the victim's common-law right to privacy. However, a requestor challenged this analysis in *Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication).

In *Austin Chronicle*, the court reviewed this office's conclusion that the governmental body must withhold an entire police report under common-law privacy because the requestor knew the names of the victims of alleged sexual assault. The court found although the report was not admitted into evidence at trial, there was undisputed evidence the general substance of the information in the report, including the names and testimony of two child victims, was a matter of public record because it was made public at trial. *Austin Chronicle*, 2009 WL 483232, at *6. The requestor provided copies of published articles on the investigation and trial and transcript excerpts from the trial. *Id.* Accordingly, the court held because there was no evidence to show the information in the report had not been made public, the report is not excepted from public disclosure under section 552.101 in conjunction with common-law privacy, and the requestor is entitled to disclosure of the report. *Id.* at *7-8. In reaching its conclusion, the court did not distinguish the report from the information it contains.

Here, a jury found the requestor's clients not guilty of sexual assault charges. The alleged sexual assault victim testified at trial and the trial transcript reflects the details of the allegations. The charges and trial were well publicized and there are published news accounts naming the alleged victim and discussing the details of her allegations. Thus, because the requested information contains information that is a matter of public record and pursuant to *Austin Chronicle*, we conclude although the requestor knows the identity of the alleged sexual assault victim, the OAG may not withhold all of the requested information.

Next, we address the OAG's section 552.108(a)(2) assertion. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. The OAG explains the information pertains to a case investigated by its Criminal Prosecution Division that concluded and did not result in conviction or deferred adjudication. Based on the OAG's representation, we conclude the OAG may withhold the information pursuant section 552.108(a)(2).

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). 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), including the identification and description of the complainant. Open Records Decision No. 127 at 4 (1976). As we stated above, a sexual assault victim's identifying information is generally considered to be private information. See Open Records Decision Nos. 393 (1983), 339 (1982). However, as we also explained above, because the alleged sexual assault victim's identity is a matter of public record, it is not protected under common-law privacy in this instance. *Austin Chronicle*, 2009 WL 483232, at *6. Therefore, with the exception of basic information, the OAG may withhold the rest of the information from public disclosure under on section 552.108(a)(2) of the Government Code.²

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)

²Because section 552.108 is dispositive, we do not address the OAG's other arguments.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 375264

Enc: Submitted documents

c: Requestor
(w/o enclosures)