



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2010

Mr. Brent A. Money
City Attorney
Scott, Money, & Ray
Post Office Box 1353
Greenville, Texas 75403-1353

OR2010-06086A

Dear Mr. Money:

This office issued Open Records Letter No. 2010-06086 (2010) on April 28, 2010. We have examined this ruling and determined that Open Records Letter No. 2010-06086 is incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. We note that this office issued Open Records Letter No. 2010-06359 (2010) in regard to the information at issue. Consequently, This amended ruling conforms to Open Records Letter No. 2010-06359. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 378994.

The Greenville Police Department (the "department"), which you represent, received a request for Report Nos. 2009-00018497 and 2010-00000920. 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 552.101 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 exception 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. *See 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. *See id.* at 683. 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 identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORDs 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld).

You seek to withhold report numbers 2009-00018497 and 2010-00000920 in their entirety on the basis of common-law privacy. Upon review, we find you have not demonstrated, nor does it otherwise appear, this is a situation where the entirety of report number 2009-00018497 must be withheld on the basis of common-law privacy. Thus, this report may not be withheld in its entirety under section 552.101 of the Government Code on that basis. However, report number 2010-00000920 relates to a sexual assault.

We note, however, the requestor is the alleged victim in report number 2010-00000920 and therefore has a special right of access to information pertaining to herself under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to a person to whom the information relates, or their authorized representative, on the grounds that information is considered confidential under privacy principles). Therefore, report number 2010-00000920 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of common-law privacy.¹ You also raise section 552.108 of the Government Code for report number 2009-00018497 as well as report number 2010-00000920. Therefore, we will address your argument under section 552.108 for both of these reports.

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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why 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 the submitted information relates to a pending criminal investigation. Based on your

¹We note that because the requestor has a right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

representation and our review, we determine the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. Department 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). Thus, we find section 552.108(a)(1) is applicable to the submitted reports.

However, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold the submitted reports under section 552.108(a)(1) of the Government Code.

We note a portion of the narrative from report number 2009-00018497 is subject to common-law privacy. As noted above, section 552.101 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. *See Indus. Found.*, 540 S.W.2d at 685. This office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find portions of the narrative from report number 2009-00018497 are highly intimate or embarrassing and not of legitimate public interest. Accordingly, in releasing basic information, the department must withhold the information we have marked in the narrative portion of this report under section 552.101 in conjunction with common-law privacy.

In summary, apart from basic information, the department may withhold the submitted reports under section 552.108(a)(1) of the Government Code. In releasing basic information from report number 2009-00018497, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VEBjb

Ref: ID#378994

c: Requestor
(w/o enclosures)