



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2010

Ms. Maria E. Miller
Legal Assistant
Dallas County Community College District
1601 South Lamar, Suite 208
Dallas, Texas 75215-1816

OR2010-06898

Dear Ms. Miller:

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# 379304.

The Dallas County Community College District (the "district") received a request for a specified incident report and the video footage associated with that report. You claim that the requested 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(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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977); Open Records Decision No.434 at 2-3 (1986). You state that the information at issue pertains to a pending criminal investigation being conducted by the district's police department. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the information you have marked. *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). We

note, however, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Basic information includes the identification and description of the complainant, but does not include the identification and description of witnesses. See *id.*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). Basic information also includes a detailed description of the offense. We note you have marked nearly the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. See ORD 127. Accordingly, we determine the district must release a sufficient portion of the narrative section of the submitted report to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Accordingly, with the exception of basic information, the district may withhold the information you have marked, including the video footage, pursuant to section 552.108(a)(1) of the Government Code. You have also marked the identity of the complainant in the basic information and assert that this individual’s identity should be withheld under “special circumstances” and common-law privacy.

Section 552.101 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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and of no legitimate public interest. See *Indust. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

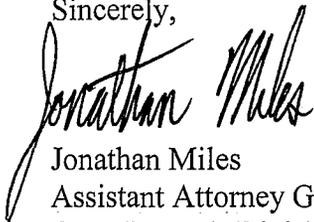
You claim that the identifying information of the complainant within the basic information is confidential pursuant to common-law privacy and “special circumstances.” You argue that it may be necessary to withhold the complainant’s information from the basic information to protect the complainant from harm. However, the Third Court of Appeals recently ruled that the “special circumstances” exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, 287 S.W.3d 390 (Tex. App.—Austin 2009, pet. filed.). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the “sole criteria” for determining whether information can be withheld under common-law privacy. *Id.*; see also *Indus. Found.*, 540 S.W.2d at 686. Upon review, we find that the identity of the complainant is not intimate or embarrassing. As you have failed to meet the first prong of the *Industrial Foundation* test for privacy, we find that the information at issue is not confidential under common-law privacy and the district may not withhold it under section 552.101 of the Government Code.

In summary, with the exception of basic information, the district may withhold the information you have marked, including the video footage, pursuant to 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 379304

Enc. Submitted documents

c: Requestor
(w/o enclosures)