



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 21, 2010

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2010-07345

Dear Mr. 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# 380109 (ORR#2010-0976).

The Montgomery County Sheriff's Department (the "department") received a request for information pertaining to ten specified case numbers. You claim that some of the requested information is exempted 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, you state the information responsive to one of the specified case numbers, report number 09A22585, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-02720 (2010). In that ruling, we concluded that, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. You indicate there has not been a change in the law, facts, and circumstances on which the prior ruling was based. Accordingly, we find the sheriff may continue to rely on that ruling as a previous determination and withhold report number 09A22585 in accordance with Open Records Letter No. 2010-02720. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not exempted from disclosure).

Next, we note that you have not submitted information responsive to eight of the remaining requested case numbers. Thus, to the extent any information pertaining to these eight case numbers existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released 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 552.108(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, and have provided an affidavit stating, that report number 10A0022434 relates to a pending criminal investigation. Based upon this representation and the submitted affidavit, we conclude that release of the information at issue 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. 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). Accordingly, we conclude that section 552.108(a)(1) of the Government Code is generally applicable to report number 10A0022434.

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*, and includes the identity of the complainant and a detailed description of the offense. *See Houston Chronicle*, 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*). We note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. We note you have marked the entire narrative portion of the submitted report and the identity of the complainant as information you seek to withhold under section 552.108(a)(1). The sheriff must release basic information, including a detailed description of the offense even if the information does not literally appear on the front page of an offense or arrest report. *See* ORD 127. Thus, with the exception of basic information, you may withhold report number 10A0022434 from disclosure under section 552.108(a)(1).

Although basic information includes the identity and description of the complainant, we note the report at issue pertains to an alleged sexual assault. 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 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 type of information considered intimate or 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.

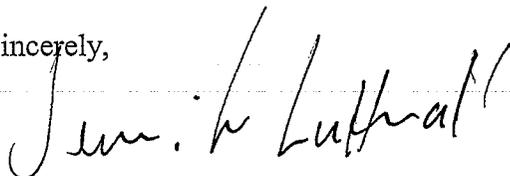
Upon review, we conclude the alleged sexual assault victim's identifying information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold the information we marked in report number 10A0022434 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff may continue to rely on Open Records Letter No. 2010-02720 as a previous determination and withhold report number 09A22585 in accordance with that ruling. With the exception of basic information, which must include a detailed description of the offense, the sheriff may withhold report number 10A0022434 from disclosure under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the sheriff must withhold the information we 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 380109

Enc. Submitted documents

c: Requestor
(w/o enclosures)