



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2010

Ms. Cara Leahy White
Taylor, Olsen, Adkins, Sralla, & Elam, L.L.P.
I-30 at Bryant-Irvin Road
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2010-08769

Dear Ms. White:

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# 382879.

The Southlake Department of Public Safety (the "department"), which you represent, received a request for information pertaining to a specified incident. 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 section encompasses information protected by 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The type 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. *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* ORD 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the submitted information reveals that the requestor knows the identity of the alleged sexual assault victim. Thus, withholding only portions of the submitted information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the submitted information must be generally withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the requestor may be the authorized representative of the individual whose privacy interests are at issue. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect the individual's common-law privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the authorized representative of the individual and has a special right of access to the submitted information, then it may not be withheld from him under section 552.101 in conjunction with common-law privacy. However, if the requestor does not have a special right of access, then the submitted report must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In the event the requestor is the authorized representative of the victim, we will address your claim under section 552.108(a)(1) of the Government Code, which 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[.]" *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) 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 inform us that the submitted information relates to a pending criminal investigation. Based upon your representation and our review, we conclude that the release of the submitted information 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8;

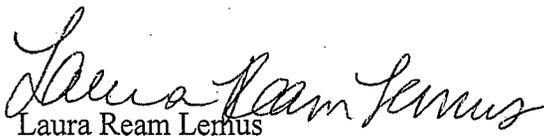
see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, if the requestor is the authorized representative of the victim, then with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is not the authorized representative of the victim, then the submitted report must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the authorized representative of the victim, then with the exception of basic information, which must be released, the department may withhold the submitted information under 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,



Laura Ream Lernus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 382879

Enc. Submitted documents

c: Requestor
(w/o enclosures)