



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2010

Mr. Samuel D. Hawk  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215-1815

OR2010-10962

Dear Mr. Hawk:

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# 387754 (Dallas ORR: 2010-4422).

The Dallas Police Department (the "department") received a request for all information pertaining to a specified incident or a named individual. You claim some of 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information includes a document that has been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. *Id.* § 552.022(a)(17). Although you seek to withhold the court-filed document, which we have marked, under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the document we have marked under 552.022(a)(17) of the Government Code may not be withheld under section 552.108. We also understand you to raise section 552.101 in conjunction with common-law privacy for the court-filed

document; however, we note that information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, pursuant to section 552.022(a)(17), the court-filed document we have marked must be released to the requestor.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information is related to a pending criminal investigation. Based on your representations and our review, we conclude that the release of the information you have marked 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).

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Basic information includes, among other things, a detailed description of the offense and the property involved. *See id.* at 179-80, 185-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note you have marked almost the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining information does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See* ORD 127. Accordingly, the department must generally 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 Houston Chronicle*, 531 S.W.2d at 186-88; ORD 127 at 3-4. Basic information also includes the identity and description of the complainant. We understand you to assert that since the submitted information pertains to a sexual assault, that the remaining information, including the basic information, is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Although you argue that the remaining information should be withheld in its entirety, you have not demonstrated, and the report does not reflect, a situation in which all of the remaining information must be withheld on the basis of common-law privacy. Furthermore, we note that the submitted information uses a pseudonym and not the alleged victim's real name. In this instance, while the alleged victim used a pseudonym, the remaining submitted information contains other identifying information of the alleged victim. Thus, we agree the department must withhold the information you have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released.

In summary, with the exception of the court-filed document subject to section 552.022(a)(17) of the Government Code and basic information, including a detailed description of the offense, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked in the remaining information 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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 387754

Enc. Submitted documents

c: Requestor  
(w/o enclosures)