



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 23, 2010

Mr. Richard L. Bilbie  
Assistant City Attorney  
City of Harlingen  
P.O. Box 2207  
Harlingen, Texas 78551

Attorney General of Texas

OR2010-11057

Dear Mr. Bilbie:

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# 387742.

The Harlingen Police Department (the "department") received a request for the report pertaining to a specified incident, as well as any photographs or video pertaining to that incident. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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: (1) 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 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 the submitted information relates to a pending criminal investigation. Based on this representation, 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) of the Government Code is generally applicable to the submitted information.

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). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information even if it does not literally appear on the front page of an offense or arrest report. See *id.* Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

We understand you to assert the basic information is confidential under common-law privacy. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. See *id.* at 681-82. The types 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. See *id.* at 683. We note that suspects' and witnesses' identifying information is not considered basic information and need not be released as part of basic information. Upon review, we find no portion of the basic information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, no portion of the basic information may be withheld under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the basic information must be released to the requestor.

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,

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure for this information, except to note that basic information may generally not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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,

A handwritten signature in black ink, appearing to read "James McGuire".

James McGuire  
Assistant Attorney General  
Open Records Division

JM/dls

Ref: ID# 387742

Enc. Submitted documents

c: Requestor  
(w/o enclosures)