



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2010

Chief Gregory L. Grigg
Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536-4942

OR2010-11960

Dear Chief Grigg:

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#389441 (Request No. 10-01588).

The Deer Park Police Department (the "department") received a request for a report of an alleged injury to an elderly person. 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 information you submitted.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 48.101 of the Human Resources Code, which is applicable to information relating to abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides in part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under [chapter 48 of the Human Resources Code];
- (2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under [chapter 48 of the Human Resources Code] or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this [chapter 48 of the Human Resources Code] and as provided by [the Texas Department of Family and Protective Services (“DFPS”) or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)-(b). You believe that the submitted information may be confidential under section 48.101. We note that the only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the DFPS and certain other state agencies, depending on the circumstances surrounding the incident.¹ *See id.* §§ 48.151, .152, .252, .301. Thus, section 48.101 is generally not applicable to records of an investigation conducted by a police department. In this instance, the submitted information reflects that it was created by the department in connection with its own investigation of a report of alleged abuse of an elderly person. You do not indicate, and the submitted information does not otherwise reflect, that the DFPS was involved in the department’s investigation or that the department has forwarded the submitted information to the DFPS. Thus, you have not demonstrated that the submitted information was used or developed in an investigation made under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Government Code.

You also claim section 552.108 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[.]” 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, and have provided documentation reflecting, that the submitted information is related to a pending criminal prosecution. Based on your representations and documentation, we conclude that section 552.108(a)(1) is generally applicable in this instance. *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).

¹In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

We note 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; Open Records Decision No. 127 (1976). Basic information includes, among other things, an identification and description of the complainant and a detailed description of the offense. See ORD 127 at 3-4 (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report.

You appear to claim that some or all of the basic information is confidential under section 552.101 of the Government Code in conjunction with 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 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

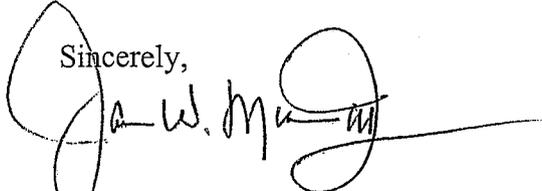
In this instance, the information at issue is related to a criminal investigation. The public has a legitimate interest in knowing the general details of a crime. See generally *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994)); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d at 186-187 (public has legitimate interest in details of crime and police efforts to combat crime in community); see also Open Records Decision Nos. 611 at 1 (1992) (family violence is a crime, not a private matter), 409 at 2 (1984) (identity of burglary victim not protected by common-law privacy). We therefore conclude that the department may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. Thus, the department must release basic information in accordance with section 552.108(c). The department may withhold the rest of 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,

A handwritten signature in black ink, appearing to read "J. W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 389441

Enc: Submitted documents

c: Requestor
(w/o enclosures)