



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2010

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City Prosecutor's Office  
City of El Paso  
810 Overland  
El Paso, Texas 79901

OR2010-13761

Dear Ms. Sandoval-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# 398120. This pertains to case number 2010-08-25-AG.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim 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 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* You assert the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication because the defendant was found not guilty. Therefore, we agree section 552.108(a)(2) is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the

information held to be public in *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).<sup>1</sup> Thus, with the exception of the basic front page offense and arrest information, the city may withhold the requested information from disclosure based on section 552.108(a)(2). Because the complainant's identity is basic information that is not excepted from disclosure by section 552.108 of the Government Code, we look next to section 552.101 of the Government Code to see if the identifying information of the complainant should be kept confidential.

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, which protects information if it (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). In Open Records Decision No. 393 (1983), this office concluded 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. ORD 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). In this instance, the complainant is the victim of an alleged sexual assault; therefore, the department must withhold the complainant's identifying information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the complainant's identifying information we have 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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>1</sup>*See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

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 "Sean Nottingham". The signature is fluid and cursive, with the first name "Sean" being more prominent than the last name "Nottingham".

Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/eeg

Ref: ID# 398120

Enc. Submitted documents

c: Requestor  
(w/o enclosures)