



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2010

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2010-13777

Dear Ms. Armstrong:

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# 394175 (Dallas Request No. 2010-6046).

The Dallas Police Department (the "department") received a request for the report pertaining to a specified incident involving the requestor's daughter. 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 representative sample of information.<sup>1</sup>

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. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2)

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<sup>1</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 (1983); *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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

The requestor in this case knows the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the submitted report would ordinarily be withheld in its entirety under section 552.101 in conjunction with common-law privacy. We note, however, that the requestor may be the authorized representative of the alleged victim. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(b). Therefore, if the requestor is not the authorized representative of the alleged victim, then the department must withhold the submitted report in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the authorized representative of the alleged victim, then, pursuant to section 552.023, the submitted report may not be withheld from this requestor under section 552.101 of the Government Code based on the alleged victim's common-law right to privacy. In such case, we note you also raise section 552.108 of the Government Code, which is not based in privacy principles. Thus, we consider your arguments under that exception to withhold the submitted report from this requestor.

Section 552.108(a)(1) 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). 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 offense listed in the submitted report is currently pending prosecution. Based on this representation and our review, we determine release of the information you marked in this report at this time 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, we find section 552.108(a)(1) is applicable to this information, and the information you marked may be withheld on that basis.

In summary, if the requestor is not the authorized representative of the alleged victim in the submitted report, the department must withhold the submitted report in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Otherwise, the department may only withhold the information you marked under section 552.108(a)(1) of the Government Code, and must release the remaining portions of the submitted report.

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 394175

Enc. Submitted documents

c: Requestor  
(w/o enclosures)