



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2010

Mr. Brent A. Money
Scott, Money, & Ray, P.L.L.C.
Attorney for the City of Greenville
P.O. Box 1353
Greenville, Texas 75403-1353

OR2010-17374

Dear Mr. Money:

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# 400058.

The City of Greenville (the "city"), which you represent, received a request for information pertaining to two specified incidents. You state the city has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 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 incident report numbers 2010-12881 and 2010-19302 pertain to pending criminal investigations. Based on your representations and our review, we determine release of incident report numbers 2010-12881 and 2010-19302 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 conclude section 552.108(a)(1) is applicable to these incident reports.

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*, 531 S.W.2d 177, and includes a detailed description of the offense. See Open Records Decision No. 127 (1976). Thus, with the exception of basic information, the city may withhold incident report numbers 2010-12881 and 2010-19302 under section 552.108(a)(1).¹ We note, however, some of the basic information in these reports is protected by common-law privacy.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type 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. *Id.* at 683. Upon review, we find the information we have marked in incident report numbers 2010-12881 and 2010-19302 is highly intimate or embarrassing and of no legitimate public concern. Therefore, the marked information is protected under common-law privacy, and the city may not release the marked information as basic information. The remaining basic information must be released.

In summary, with the exception of basic information, the city may withhold incident report numbers 2010-12881 and 2010-19302 under section 552.108(a)(1) of the Government Code. In releasing the basic information from these reports, the city may not release the information we have marked, which is protected under section 552.101 of the Government Code in conjunction with common-law privacy.

¹As our ruling is dispositive, we need not address your argument under section 552.108(b)(1) of the Government Code.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that reads "Tamara H. Holland". The signature is written in a cursive, flowing style.

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 400058

Enc. Submitted documents

c: Requestor
(w/o enclosures)