



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2010

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-19467

Dear Mr. Reinwand:

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# 404507 (Ref. No. 2223-101310).

The Arlington Police Department (the "department") received a request for the report pertaining to a specified incident involving a named individual. You claim the submitted incident report 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 552.101 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 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). You argue the submitted incident report should be withheld in its entirety under section 552.101 in conjunction with common-law privacy. The submitted report pertains to an alleged sexual assault. Generally, only 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. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold all of the information at issue when

the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. Although you seek to withhold the entire report, you have not demonstrated, nor does the information reflect, the requestor knows the identity of the alleged sexual assault victim. Thus, the department may not withhold the entire report under common-law privacy.

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 indicate the submitted incident report number 10-65887 pertains to a pending criminal investigation. Based on this representation and our review, we conclude the release of this 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108, however, 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*, and includes the identity of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). In this instance, the complainant is also the alleged sexual assault victim listed in the report. As previously noted, the identifying information of an alleged sexual assault victim is protected by common-law privacy. Thus, the city must withhold the victim’s identifying information from the basic information. With the exception of the remaining basic information, the city may withhold the submitted incident report under section 552.108(a)(1) of the Government Code.

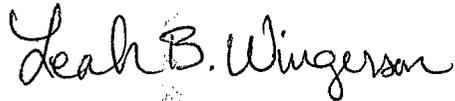
In summary, with the exception of basic information, the city may withhold the submitted incident report under section 552.108(a)(1) of the Government Code. In releasing the basic information, the city must withhold the alleged sexual assault victim’s identifying information under section 552.101 of 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/vb

Ref: ID# 404507

Enc. Submitted documents

c: Requestor
(w/o enclosures)