



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2011

Ms. Debra A. Drayovitch
Attorney and Counselor at Law
Drayovitch P.C.
620 West Hickory Street
Denton, Texas 76201

OR2011-01859

Dear Ms. Drayovitch:

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#408343.

The Corinth Police Department (the "department"), which you represent, received a request for a police report for a specified incident that occurred on a specified date. You state the department has released some of the requested information. You claim that some of 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 submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the report for incident #201018972 pertains to a criminal case that is under investigation. Based upon your representation and our review, we conclude that release of the incident report 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

We note, however, 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 front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, an identification and description of the complainant. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

You argue that release of the complainant's identity "could jeopardize [her] safety" and the requestor could "use [this information] or cause it to be used to intimidate or harass [her] or harm the prospect of future cooperation" from this individual. This office has previously determined that, when it can be established from an examination of the facts of a particular case that disclosure of witness identities and statements might subject the witnesses to possible intimidation or harassment, that information may be excepted from disclosure under the predecessor to section 552.108. See, e.g., Open Records Decision Nos. 329 (1982), 313 (1982), 297 (1981). Upon review, we find that you have failed to reasonably explain how release of the complainant's identity could subject this individual to intimidation or harassment. Therefore, we find you have failed to demonstrate how release of this information would interfere with law enforcement, and determine the department may not withhold the complainant's identifying information under section 552.108(a)(1) of the Government Code. Accordingly, with the exception of the basic front page offense and arrest information, the department may withhold the incident report based on section 552.108(a)(1) of the Government Code. We note that the department has the discretion to release all or part of the information that is not otherwise confidential by law. See Gov't Code § 552.007.

You raise section 552.101 of the Government Code in conjunction with common-law privacy for the complainant's identifying 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. Section 552.101 encompasses the common-law right of 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). 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 and 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. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. See Open Records Decision No. 373 (1983).

You cite to *Morales v. Ellen* to support your argument against disclosure of the identifying information you have marked in the basic information. 840 S.W.2d 519 (Tex. App.— El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such

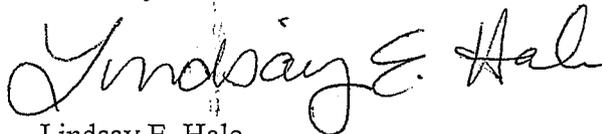
information). Generally, under common-law privacy, information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In this instance, however, the incident report does not pertain to an alleged sexual assault or sex-related offense. Furthermore, upon review, we find that the remaining information you have marked is neither highly intimate or embarrassing nor not of legitimate public concern. Therefore, the department may not withhold the identifying information you have marked in the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic front-page information, the department may withhold incident report #201018972 under section 552.108(a)(1) of the Government Code. The department must release the basic information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 408343

Enc. Submitted documents

c: Requestor
(w/o enclosures)