



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2011-03587A

Dear Mr. Walker:

This ruling examines Open Records Letter No. 2011-03587 (2011) and whether certain information is subject to required public disclosure under chapter 552 of the Government Code.

The Montgomery County Sheriff's Department (the "department") received a request for reports concerning calls to and from the requestor's address. In the department's original request for a decision in this matter, this office concluded the department may withhold Exhibit B-1 under section 552.108(a)(1) of the Government Code after release of basic information pursuant to section 552.108(c). However, we did not address the department's request to withhold Exhibit B-2 under section 552.101 of the Government Code. We have re-examined our ruling in Open Records Letter No. 2011-03587 and determined that we made an error. Where this office determines an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on March 10, 2011.

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 doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v.*

Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. Exhibit B-2 contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. In most cases, the department would be allowed to withhold only this information. In this instance, however, the requestor knows the identity of the individual involved as well as the information in question. Therefore, withholding only certain details of the incident from the requestor would not preserve the individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we determine the department must withhold Exhibit B-2 in its entirety under section 552.101.

Next, we address the department's section 552.108 assertion for Exhibit B-1. Section 552.108(a) 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." 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 Gov't Code §§ 552.108(a)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B-1 relates to a pending criminal prosecution. Based upon this representation, we conclude release of the offense 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).

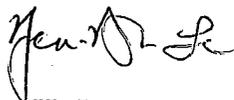
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit B-1 from disclosure based on section 552.108(a)(1). Open Records Letter No. 2011-03587 is overruled to the extent it conflicts with this ruling.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 419233

Enc: Submitted documents

c: Requestor
(w/o enclosures)