



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 13, 2011

Mr. Jose Hernandez  
Interim Records Supervisor  
Edinburg Police Department  
1702 South Closner Boulevard  
Edinburg, Texas 78539

OR2011-05984A

Dear Mr. Hernandez:

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# 417913 (City of Edinburg Reference #19326 and #19633).

The Edinburg Police Department (the "department") received two requests for a specified police report. You state you will release basic information. You claim that 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 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.

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 an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORD 393, 339; *see also Morales v. Ellen*, 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); ORD 440 (detailed descriptions of serious sexual offenses must be withheld).

In this case, the report relates to an alleged sexual assault. The first request for information (City of Edinburg Reference #19326) reveals that this requestor knows the identity of the alleged sexual assault victim. Therefore, withholding only the victim's identifying information from this requestor would not preserve the individual's common-law right to privacy. Accordingly, to protect the victim's privacy, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy from the first requestor.<sup>1</sup> However, it does not appear that the individual who submitted the second request (City of Edinburg Reference #19633) knows the identity of the alleged victim. Accordingly, the submitted information may not be withheld in its entirety under common-law privacy from the second requestor. Thus, we will address your remaining arguments against disclosure of the submitted information to the second requestor.

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: (1) 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(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A). You state that the submitted information relates to an open criminal investigation, and that release of the information would interfere with the detection and investigation of a crime. Based on your representation and our review, we conclude that the release of the information at issue 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).

As you acknowledge, section 552.108 of the Government Code 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*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic information includes the identity of the complainant and a detailed description of the offense. ORD 127 (1976). As previously

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information to the first requestor.

noted, the submitted report pertains to an alleged sexual assault. Generally, information that tends to identify a victim of a sexual assault is excepted from disclosure pursuant to section 552.101 in conjunction with common-law privacy. *See* ORDs 440, 393, 339. Thus, in releasing basic information to the second requestor, the department must withhold the information we have marked that identifies the alleged sexual assault victim under section 552.101 in conjunction with common-law privacy. With the exception of the information we have marked, the department must release basic information in accordance with section 552.108(c) to the second requestor. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold, with the exception of basic information, the submitted information under section 552.108(a)(1) of the Government Code from the second requestor. However, the department must withhold from basic information the information we have marked under section 552.101 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](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,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/sdk

Ref: ID# 417913

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)