



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 17, 2011

Ms. Candice M. Gambrell  
Assistant City Attorney  
City of Houston  
PO Box 368  
Houston, Texas 77001

OR2011-11910

Dear Ms. Gambrell:

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# 427259 (GC No. 18630).

The Houston Police Department (the "department") received a request for reports, affidavits, DNA test results, officer statements, court manuscripts, arrest and search warrants, and polygraph results pertaining to a named former department officer. You state some responsive information will be made available to the requestor. You claim 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 552.108(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 the submitted information relates to a pending criminal prosecution. Specifically, you note that although this case has gone to trial and a conviction was obtained, the case is currently on appeal. Based upon your representations and our review, we conclude that release of the submitted information at this

time 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, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle* and includes the identity and description of the complainants. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup>

You next contend the basic information contains information that is protected under common-law privacy. Section 552.101 of the Government Code 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). The types 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. In this instance, the complainants were the victims of alleged sexual assaults. This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense is highly intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We therefore conclude the department must withhold the alleged sexual assault victims' identifying information from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. The department must withhold the alleged sexual assault victims' identifying information from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released.<sup>2</sup>

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your argument under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

<sup>2</sup>We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/agn

Ref: ID# 427259

Enc. Submitted documents

c: Requestor  
(w/o enclosures)