



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2011

Ms. Candice Gambrell
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77002-0368

OR2011-13591

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# 430420 (GC No. 18711).

The City of Houston and the Houston Police Department (collectively, the "city") received a request for twelve categories of information pertaining to a named officer and a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information appears to be the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-12009 (2011). We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior ruling, the city must continue to rely on that ruling as a previous determination and withhold or release the requested information in accordance with Open Records Letter No. 2011-12009. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent

the requested information is not encompassed by Open Records Letter No. 2011-12009, we will address your arguments against its release.

Next, we note you have not submitted any information responsive to the requestor's request for records provided to the city by the New York City Police Department related to the named officer. Because you have not submitted information responsive to this portion of the request for our review, we assume you have released it to the extent it exists. *See* Gov't Code §§ 552.301, .302. If you have not released this information, you must do so at this time. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information contains completed evaluations subject to section 552.022(a)(1) of the Government Code and a search warrant and a set of pleadings subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body [,]" unless the information is expressly confidential under "other law" or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See* Gov't Code § 552.022(a)(17). You claim the court-filed documents are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body's interests and are, therefore, not "other law" for purposes of section 552.022(a)(17). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not withhold the court-filed documents, which we have marked, under section 552.103 or section 552.108 of the Government Code. Additionally, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As you raise no further exceptions to disclosure of the court-filed documents, the city must release the search warrant and pleadings to the requestor. Additionally, although you raise section 552.103 for the completed evaluations, this section is not "other law" for purposes of section 552.022(a)(1). Therefore, the city may not withhold the completed evaluations under section 552.103. However, we will address whether the completed evaluations may be withheld under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See 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. In Open Records Decision No. 393 (1983), this office concluded that, generally, only information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You have submitted information pertaining to five cases involving sexual assault. The requestor knows the identity of the alleged victim in regards to one of these cases; thus, withholding only the identifying information of this victim from the requestor would not preserve the victim's common-law right to privacy. Thus, the city must withhold the information pertaining to this case, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹ We note the remaining information may not be withheld in its entirety under common-law privacy, and, as such, we will address your arguments against its disclosure.

You assert the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 remaining information pertains to pending criminal investigations by the city’s police department. Based on this representation and our review, we determine 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. 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).

¹As our ruling is dispositive, we need not address the city’s remaining arguments against disclosure of this information.

Accordingly, we find section 552.108(a)(1) is generally applicable to the remaining information.

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 complainant. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note, however, that the complainants in the remaining information are alleged victims of sexual assault. As previously noted, 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* ORDs 440, 393, 339. We, therefore, conclude the city must withhold the alleged sexual assault victims' identifying information, which we have marked, from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108 of the Government Code. When releasing basic information, the city must withhold the sexual assault victims' identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.²

In summary, the city must continue to rely on Open Records Letter No. 2011-12009 as a previous determination and withhold or release the requested information to the extent it is identical to the requested information in that prior ruling. The city must release the court-filed documents we have marked under section 552.022(a)(17) of the Government Code. The city must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold the remaining information under section 552.108 of the Government Code. When releasing basic information, the city must withhold the sexual assault victims' identifying information, which we have marked, 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,

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 430420

Enc. Submitted documents

c: Requestor
(w/o enclosures)