



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2011

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805-1000

OR2011-15819

Dear Ms. DeLuca:

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# 434825.

The Bryan Police Department (the “department”) received a request for incident report number 93090586. 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)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the submitted incident report pertaining to case number 93090586 pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. We note the department received the request for information from a Court Appointed Special Advocates of Brazos Valley (“CASA”) representative. You have provided us with a copy of a court order included with the

requestor's request for information showing CASA was appointed the guardian ad litem of a named child and CASA shall have access to certain records pertaining to the child. The submitted information, however, pertains to the alleged sexual assault of an adult. Neither the department nor CASA has explained, and it is not apparent on the face of the document, how the court order regarding the named child pertains to the submitted information. Therefore, based on your representations and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

Section 552.108, however, 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), and includes the identity of the complainant and a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). In this instance, the complainant is also the alleged victim listed in the submitted report. You seek to withhold the complainant's identifying information under common-law privacy. Because the submitted information relates to an alleged sexual assault, the department would ordinarily be required to withhold the identity of the complainant under section 552.101 of the Government Code in conjunction with common-law privacy.¹ See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, however, the complainant is identified by only a pseudonym. The use of a pseudonym sufficiently protects the complainant's privacy. Thus, with the exception of basic information, the department may withhold incident report number 93090586 under section 552.108(a)(2) of the Government Code.²

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,

¹Section 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. This section encompasses the doctrine of common-law privacy.

²We 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. Furthermore, as our ruling is dispositive, we need not address your remaining argument against disclosure for a portion of the information.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 434825

Enc. Submitted documents

c: Requestor
(w/o enclosures)