



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2011

Ms. Sandy Murillo
Records Clerk
Saginaw Police Department
505 West McLeroy Boulevard
Saginaw, Texas 76179

OR2011-17616

Dear Ms. Murillo:

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# 440130 (Saginaw PD Records ID# 5866, 5867, and 5868).

The Saginaw Police Department (the "department") received three requests for information. The first requestor seeks police reports involving a named individual. The second and third requestors seek police reports from specified dates involving the named individual. 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.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code § 552.022(a)). The submitted information includes a search warrant that has

been filed with a court and is subject to section 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *Id.* §§ 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *see* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, the search warrant, which we have marked, may not be withheld under section 552.108. 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 document, the department must release this document.

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.” Gov’t Code § 552.108(a)(1). Generally, 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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information relates to an ongoing criminal investigation. Based on your representation and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108(a)(1) is applicable. *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).

We note 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*. *See* 531 S.W.2d at 177; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information includes, among other things, the identity and description of the complainant. *See* ORD 127 at 3-4. However, basic information does not include the identity of a victim who is not the complainant. *See id.* Accordingly, with the exception of basic information, the department may withhold the remaining information from disclosure under section 552.108(a)(1).¹

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. This section 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 Open Records Decision No. 393 (1983), this office concluded 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. Open Records Decision Nos. 393 at 2 (1983), 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.— El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information and public did not have a legitimate interest in such information). We note portions of the narrative and basic information identify the victims of a sex-related offense. Therefore, in releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, the department must release the court-filed document we have marked under section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the information 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, 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,

A handwritten signature in black ink that reads "Kirsten Brew". The signature is written in a cursive, flowing style.

Kirsten Brew
Assistant Attorney General
Open Records Division

KB/ag

Ref: ID# 440130

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)