



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2012

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2012-03354

Dear Ms. Byles:

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# 451179 (P.I.R. No. W014480).

The City of Fort Worth (the “city”) received a request for information pertaining to the requestor. You state the city has released some of the responsive information. 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.

You seek to withhold report number 09-81640 under section 552.108 of the Government Code. Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 09-81640 relates to a pending criminal investigation. Based on this representation and our review, we conclude the city generally may withhold report number 09-81640 under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. Department 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, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, which you state the city has released, the city may withhold report number 09-81640 under section 552.108(a)(1) of the Government Code.

You seek to withhold report number 11-82469 under section 552.101 of the Government Code, which 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 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. This office has found that 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 Open Records Decision Nos. 393 (1983), 339 (1982); see also Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). As you acknowledge, the requestor in this instance is the victim of the alleged sexual assault and therefore has a special right of access to her own information that would otherwise be withheld on the basis of privacy. See Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Accordingly, the city may not withhold any portion of report number 11-82469 from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

We note section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to

CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the city must withhold the information we have marked in report number 11-82469 under section 552.101 of the Government Code in conjunction with chapter 411 and federal law.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country.¹ Gov’t Code § 552.130(a)(1). Therefore, the city must withhold the information we have marked in report number 11-82469 under section 552.130 of the Government Code.

In summary, with the exception of basic information, which you state the city has released, the city may withhold report number 09-81640 under section 552.108 of the Government Code. The city must withhold the information we have marked in report number 11-82469 under section 552.101 of the Government Code in conjunction with chapter 411 and federal law. The city must also withhold the information we have marked in report number 11-82469 under section 552.130 of the Government Code. The city must release the remaining information in report number 11-82469 to this requestor.²

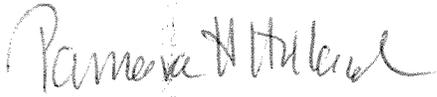
¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note the information being released contains social security numbers. 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. Gov’t Code § 552.147(b). The requestor, however, has a right of access to her own social security number. *See id.* § 552.023. The city may withhold the social security number pertaining to another individual under section 552.147. We also note that because the requestor has a right of access under section 552.023 of the Government Code to the information being released, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office. *See* Gov’t Code §§ 552.023(a), .301, .302.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 451179

Enc. Submitted documents

c: Requestor
(w/o enclosures)