



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2012

Mr. Mark Daniel
For City of Watauga
Evans, Daniel, Moore, Evans & Lazarus
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2012-05910

Dear Mr. Daniel:

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# 451825 (Requests 12-63 and 12-64).

The Watauga Police Department (the "department"), which you represent, received two requests for a specified incident report. You claim that the requested 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 552.101 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 common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). The submitted report relates to an alleged sexual assault. You argue the report should be withheld in its entirety. Generally, only 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 all of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. Despite the use of a pseudonym by the

victim in the report, the submitted information reflects the first requestor knows the identity of the alleged victim. Thus, withholding only the victim's identifying information from this requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the submitted information must be withheld from this requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated, nor does the information reflect, that the second requestor knows the identity of the alleged sexual assault victim. Thus, the department may not withhold the submitted report from the second requestor in its entirety under section 552.101 in conjunction with common-law privacy.

Section 552.108 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 must reasonably explain how and why section 552.108 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 the submitted information is related to an open criminal case. Based on your representation, we conclude section 552.108(a)(1) is generally applicable in this instance. *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 that 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. We note basic information includes, among other items, an identification and description of the complainant, but does not include identifying information of a victim, unless the victim is also the complainant. *See* ORD 127 at 3-4. In this instance, we note the victim is not the complainant. Therefore, the department may not withhold the basic information from the second requestor under section 552.101 in conjunction with common-law privacy.

Finally, you also seek to withhold the basic information under section 552.101 in conjunction with constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5, 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101

is reserved for “the most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village*, Tex., 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have not demonstrated how any of the information at issue falls within the zones of privacy. Thus, no portion of the basic information may be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, the submitted information must be withheld from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, which must be released to the second requestor, the department may withhold the submitted information from the second requestor under section 552.108 of the Government Code.¹

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# 451825

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument under section 552.108(b)(1).