



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2012

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Rd.
Cedar Park, Texas 78613

OR2012-19113

Dear Ms. Quinn:

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# 472346 (Reference Number 12-825).

The City of Cedar Park (the "city") received a request for a specified police report. You state the city will redact driver's license numbers pursuant to section 552.130 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 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 common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The submitted information pertains to a report of alleged sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally only information that either identifies

¹Section 552.130 of the Government Code permits a governmental body to redact driver's license numbers, which are subject to section 552.130(a)(1), without the necessity of requesting a decision from this office. See Gov't Code § 552.130(c)-(e).

or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. ORD 393 at 2; *see also* Open Records Decision Nos. 440 (1986), 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). However, a governmental body is required to withhold an entire report when the requestor knows the identity of the alleged victim.

In this instance, the requestor knows the identity of the alleged sexual assault victim. However, the requestor is the spouse of the individual whose privacy interests are at issue, and may be this individual's authorized representative. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because we are unable to determine whether the requestor is the authorized representative of the individual whose privacy interests are at issue, we must rule conditionally. If the requestor is not the authorized representative of the individual, then the submitted report must be withheld in its entirety under section 552.101 in conjunction with common-law privacy. If the requestor is the authorized representative of the individual, he has a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy, and the submitted information may not be withheld under section 552.101 on that basis. In that instance, we will consider your remaining argument against disclosure of the submitted information.

Section 552.108(a)(1) 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 claiming section 552.108(a)(1) 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 submitted information pertains to a pending criminal investigation. Based on your representation, we agree release of the submitted 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. 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). Thus, we find section 552.108(a)(1) is generally applicable to the submitted information.

We note, however, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

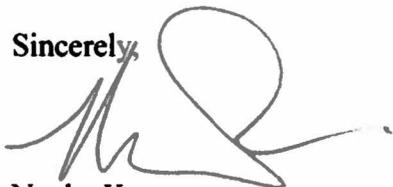
Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is not the authorized representative of the individual whose privacy interests are at issue, then the submitted report must be withheld in its entirety under section 552.101 of Government Code in conjunction with common-law privacy. If the requestor is the authorized representative of his spouse, then with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 472346

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.