



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2014

Ms. Captoria Brown
Paralegal
Office of the City Attorney
City of Carrollton
1945 East Jackson
Carrollton, Texas 75006

OR2014-19652

Dear Ms. Brown:

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# 541574 (City ID No. 3293).

The City of Carrollton (the "city") received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed 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 prosecution. Based on your representation, we conclude the release of the information at issue 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, section 552.108(a)(1) is applicable to the information you have marked.

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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. *Id.* In this instance, you have marked the narrative information you seek to withhold under section 552.108. The remaining information does not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See id.* Accordingly, we determine the city must release a sufficient portion of the narrative to encompass a detailed description of the offense. Thus, with the exception of basic information, the city may generally withhold the information you have marked under section 552.108(a)(1) of the Government Code.

We note the remaining information and the basic information portion of the narrative contain information subject to common-law privacy. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense is highly intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1992). We, therefore, conclude the city must generally withhold the alleged sexual assault victim's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Accordingly, the city must generally withhold the personal e-mail address

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

we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

However, we note that the requestor in this instance is a surveyor with the Texas Department of Aging and Disability Services (“DADS”). Under chapter 48 of the Human Resources Code, DADS’s duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.007, .151, .152. Section 48.154 of the Human Resources Code provides in pertinent part:

(a) The [Texas Department of Family and Protective Services (“DFPS”)] or state agency, as appropriate, shall have access to any records or documents, including client-identifying information and medical and psychological records, necessary to the performance of the [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person or agency that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or agency that requested the record or document.

Id. § 48.154. Thus, to the extent DADS is seeking the information to perform its duties under chapter 48, DADS has a right of access to the submitted information, and it must be released to this requestor. A statutory right of access generally prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.— Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *see also CenterPoint Energy Houston Elec. I.L.C. v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). In addition, a specific statutory right-of-access provision generally prevails over the Act’s general exceptions to disclosure, such as sections 552.108 and 552.137. *See* Open Records Decision Nos. 623 at 3 (1994), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 525 at 3 (1989), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, to the extent DADS is seeking the submitted information to perform its duties under chapter 48 of the Human Resources Code, the city may not withhold any of the information under section 552.101 in conjunction with common-law privacy or sections 552.108 and 552.137.

In summary, to the extent DADS is seeking the submitted information to perform its duties under chapter 48 of the Human Resources Code, DADS has a right of access to the submitted information, and it must be released to this requestor. Otherwise, except for basic information, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the victim’s identifying information under section 552.101 of the Government Code in conjunction with

common-law privacy. The city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 541574

Enc. Submitted documents

c: Requestor
(w/o enclosures)