



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 17, 2016

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

OR2016-06146

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# 601920 (City ID# 6481).

The City of Carrollton (the "city") received a request for a specified case number. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,] unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; 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). Additionally, although you also seek to withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public records. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57

(Tex. 1992) (law cannot recall information once in public domain). Therefore, the court-filed documents we have marked may not be withheld under section 552.108 or section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure for the court-filed documents, the city must release these documents. However, we will address the city's arguments against disclosure of the remaining information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In this instance, the submitted information pertains to an alleged sexual assault. 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 must generally withhold all of the information pertaining to a sexual assault when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. We note the requestor is the individual whose privacy interest is at issue. *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 herself). Thus, the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy. Accordingly, the city may not withhold all the remaining information from this requestor under section 552.101 on the basis of common-law privacy.

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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). You state, and provide documentation showing, the remaining information relates to a prosecution currently pending with the Dallas County District Attorney's Office. Based on this representation, we conclude the release of the remaining 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests 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). 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state the city has released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, the city must release the court-filed documents, which we have marked, pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which you state the city has released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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](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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/dls

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<sup>1</sup>We note the requestor has a special right of access to some of the basic information being released in this instance. Gov't Code § 552.023. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.

Ref: ID# 601920

Enc. Submitted documents

c: Requestor  
(w/o enclosures)