



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 30, 2015

Ms. Jo-Christy Brown
Counsel for the City of Bastrop
Law Offices of JC Brown, P.C.
1411 West Avenue, Suite 100
Austin, Texas 78701

OR2015-08355

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# 561864.

The City of Bastrop (the "city"), which you represent, received a request for case number 95-05-0441. 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.

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 demonstrated. *See id.* at 681-82.

The submitted information pertains to a report of alleged sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was

inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Thus, this office has held when a requestor knows the identity of the alleged sexual assault victim, an agency must withhold all of the information because withholding only the identifying information would not preserve the victim's common-law right to privacy. However, a requestor challenged this analysis in *Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication).

In *Austin Chronicle*, the court reviewed this office's conclusion that the governmental body must withhold an entire police report under common-law privacy because the requestor knew the names of the victims of alleged sexual assault. The court found although the report was not admitted into evidence at trial, there was undisputed evidence the general substance of the information in the report, including the names and testimony of two child victims, was a matter of public record because it was made public at trial. *Austin Chronicle*, 2009 WL 483232, at *6. The requestor provided copies of published articles on the investigation and trial and transcript excerpts from the trial. *Id.* Accordingly, the court held because there was no evidence to show the information in the report had not been made public, the report is not excepted from public disclosure under section 552.101 in conjunction with common-law privacy, and the requestor is entitled to disclosure of the report. *Id.* at *7-8. In reaching its conclusion, the court did not distinguish the report from the information it contains.

Here, a jury found the suspect listed in the submitted report guilty of capital murder of a separate victim and sentenced him to death. Further, the victim listed in the submitted report testified in the sentencing phase of the suspect's murder trial. The charge, trial, and death sentence have been well publicized and there are published news accounts naming the alleged victim listed in the submitted report and discussing the details of her allegations. Thus, because the requested information contains information that is a matter of public record and pursuant to *Austin Chronicle*, we conclude although the requestor knows the identity of the alleged sexual assault victim, the city may not withhold the requested information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A)

(governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed case that did not result in conviction or deferred adjudication. We note the statute of limitations for sexual assault is ten years and has expired in this instance. *See* Crim. Proc. Code art. 12.01(2)(E); Penal Code § 20.011. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity and description of the complainant. *See id.* at 3-4. Thus, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹

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. You raise section 552.101 in conjunction with the common-law informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. *See* Open Records Decision No. 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990). We note the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. *See* ORD 208 at 1-2.

You argue the basic information identifies a complainant who reported violations of law to the city’s police department. However, we note the subject of the complaint is aware of the

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

identity of the reporting party. Thus, we find you have not demonstrated how the basic information identifies an informant for purposes of the informer's privilege. Accordingly, the city may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege, and the city must release the basic 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,

A handwritten signature in black ink that reads "Claire V. Morris Sloan" with a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 561864

Enc. Submitted documents

c: Requestor
(w/o enclosures)