



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 20, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78207

OR2022-01671

Dear Mr. Kopp:

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# 926601 (COSA File Nos. W410496 & W417436).

The City of San Antonio (the “city”) received two requests from different requestors for information pertaining to a specified incident. You state you released some information. 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 552.108(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 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). The city states the submitted information pertains to an active criminal investigation or prosecution. Based on this 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 submitted information.

However, we note 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 the identity of the complainant but does not include the identity of the victim, unless the victim is the complainant. See ORD 127 at 3-4. Thus, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

We understand you to claim the basic information is excepted from disclosure under section 552.101 of the Government Code. 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy 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). In this instance, the submitted information pertains to a sex-related offense. 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, in this instance, the second requestor is the victim of the alleged sexual assault. 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 city may not withhold the identifying information of the victim from the second requestor. However, there is no indication the first requestor has a right of access to the identifying information of the victim. Accordingly, in releasing the basic information, the city must withhold the identifying information of the victim from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, however, we find the city has failed to demonstrate the remaining basic information is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold the remaining basic information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information to the first requestor, the city must withhold the identifying information of the victim under section 552.101 of the Government Code in conjunction with common-law privacy.

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/ba

Ref: ID# 926601

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)