



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 24, 2015

Mr. John C. West
General Counsel
TDCJ - Office of the Inspector General
4616 West Howard Lane, Suite 250
Austin, Texas 78728

OR2015-20035

Dear Mr. West:

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# 580526.

The Office of Inspector General of the Texas Department of Criminal Justice (the "department") received a request for a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, 552.134, and 552.147 of the Government Code. We have considered the exceptions you claim 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 you raise section 552.108 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold any of the information subject to section 552.022(a)(17), which we have marked, under section 552.108 of the Government Code. Additionally, we note common-law privacy

is not applicable to information contained in public records. *See Cox Broadcasting 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). Accordingly, the department may not withhold any of the information subject to section 552.022(a)(17), which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department raises sections 552.102, 552.1175, and 552.134 of the Government Code for this information, which make information confidential for purposes of section 552.022. Accordingly, we will consider the applicability of these exceptions to the court-filed documents subject to section 552.022(a)(17). Further, we will address the department's arguments against disclosure of the remaining 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 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 not subject to section 552.022 of the Government Code.

However, we note, and you acknowledge, 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 does not include motor vehicle record information protected by section 552.130 of the Government Code or dates of birth. *See* ORD 127 at 3-4. We note basic information includes the identity and description of the complainant, but does not include the identity of the victim, unless the victim is the complainant. *See* ORD 127. Additionally, we note basic information includes an arrestee's name, race, sex, age, occupation, address, physical condition, and social security number, but does not include information related to a witness or to a suspect who was not arrested. *See id.* Thus, with the exception of the information subject to section 552.022 of

the Government Code and the basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

You also claim some of the basic information is subject to the doctrine of common-law privacy, which is encompassed by 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. Common-law privacy protects information that (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). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded 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. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 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). Upon review, we find the basic information contains the identifying information of a sexual assault victim. This information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing basic information, the department must withhold the identity of the victim under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.134 of the Government Code relates to information about inmates of the department. This exception provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov’t Code § 552.134(a). You assert the remaining information consists of records pertaining to inmates confined in a facility operated by the department. However, the information at issue pertains to the conduct of a former department employee and, therefore,

¹As our ruling under section 552.108 of the Government Code is dispositive, we need not address your remaining arguments against disclosure of this information, except to note the basic information at issue is not excepted from disclosure under section 552.134 of the Government Code. *See* Gov’t Code § 552.029(8).

is not “about an inmate” for purposes of section 552.134. Thus, the department may not withhold the remaining information under section 552.134.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). However, section 552.102(a) is applicable only to information the department holds in an employment context. Upon review, we find the department does not maintain the information at issue in an employment context. Therefore, the department may not withhold any of the remaining information under section 552.102(a) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. Section 552.1175 applies, in part, to “current or former employees of the [department] or of the predecessor in function of the department or any division of the department[.]” *Id.* § 552.1175(a)(3). Some of the information subject to section 552.022, which we have marked, relates to a former employee of the department, and the information is not held in an employment capacity. Accordingly, if the individual at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code.

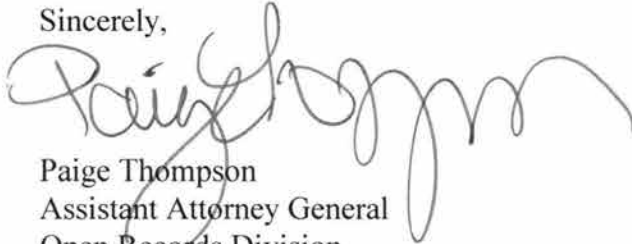
In summary, with the exception of the information subject to section 552.022 of the Government Code and the basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the identity of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code. The department 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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is fluid and cursive, with a large initial "P" and a long, sweeping tail.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 580526

Enc. Submitted documents

c: Requestor
(w/o enclosures)