



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 29, 2016

Ms. Vanessa A. Gonzalez
Counsel for Baylor University
Bickerstaff Heath Delgado Acosta LLP
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2016-26350

Dear Ms. Gonzalez:

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# 637434.

The Baylor Police Department (the "department"), which you represent, received a request for information pertaining to a named individual. The department claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the McLennan County Criminal District Attorney's Office (the "district attorney's office"), the requestor, and an attorney for the named individual. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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

highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. The department argues Exhibit C7 must be withheld in its entirety on the basis of common-law privacy. However, the department has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of Exhibit C7 must be withheld on that ground. Thus, the department may not withhold Exhibit C7 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We also note we have received correspondence from an attorney for the individual whose information is at issue, in which the attorney states his client waives his right to privacy with respect to the requested information, and gives the department permission to disclose any records pertaining to him. Based on this representation, we conclude the department may not withhold any of the submitted information under section 552.101 in order to protect the named individual's privacy interests.

The department asserts the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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: (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 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). The district attorney's office objects to the release of the submitted information because it pertains to pending criminal investigations and prosecutions. Based on this representation, we conclude the release of this 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).

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*. *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*). We note basic information includes a detailed description of the offense and 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 basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

As discussed above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Upon review, we find some of the basic information in Exhibit C7 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*.

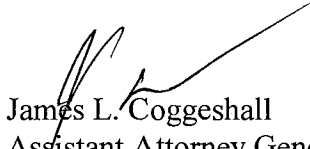
Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

To conclude, with the exception of basic information, which the department must generally release, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information from Exhibit C7, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 637434

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)