



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 3, 2017

Ms. Vanessa A. Gonzalez  
Counsel for Baylor University  
Bickerstaff, Heath, Delgado, Acotsa, L.L.P.  
3711 South MoPac Expressway, Building 1, Suite 300  
Austin, Texas 78746

OR2017-01366A

Dear Ms. Gonzalez:

Our office issued Open Records Letter No. 2017-01366 (2017) on January 20, 2017. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on January 20, 2017. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"))).

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# 655188.

The Baylor University Police Department (the "department"), which you represent, received a request for information pertaining to sexual crimes for a specified time period. The department claims some of the requested information is not subject to the Act. Additionally, the department claims the submitted information is excepted from disclosure under

sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the 84th Legislature added section 51.212(f) of the Education Code, which reads as follows:

(f) A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.

Educ. Code § 51.212(f). We understand the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. You indicate the submitted information is maintained by the department. However, you contend portions of the submitted information relating to whether the case was referred to the dean of students or other official on campus responsible for handling student disciplinary issues is information that is not solely related to law enforcement activities. You state this information relates to student disciplinary issues which are not law enforcement activities. Nevertheless, these reports were created by the department for the purpose of law enforcement. Therefore, we find these police reports relate solely to law enforcement activities for purposes of section 51.212(f) of the Education Code, and thus are subject to the Act. Accordingly, this information must be released, unless it falls within an exception to public disclosure under the Act. *See Gov't Code* §§ 552.006, .021, .301, .302. Consequently, we will consider your arguments against disclosure of this information.

Next, you inform us a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-24446 (2015). In Open Records Letter No. 2015-24446, we determined, with the exception of basic information, the department may withhold report number A-0398 under

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<sup>1</sup>You acknowledge, and we agree, the department did not comply with the requirements of section 552.301 of the Government Code for some of the information at issue. *See Gov't Code* § 552.301(b), (e). The department claims section 552.101 of the Government Code for the information at issue. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the information at issue. *See id.* §§ 552.007, .302.

<sup>2</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision* Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.108(a)(1) of the Government Code and report number B-0564 under section 552.108(a)(2) of the Government Code. However, in releasing basic information from report number B-0564, the department must withhold the identifying information of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. You assert, and have submitted documentation demonstrating, the law, facts, or circumstances on which the prior ruling was based have not changed. Accordingly, the department must continue to rely on Open Records Letter No. 2015-24446 as a previous determination and withhold or release the previously requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the information submitted in Exhibits B and B2 is not subject to the previous ruling. Thus, we will address the exception you claim for this information.

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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find Exhibit B was used or developed in an investigation of alleged child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we

determine Exhibit B is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the department must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup>

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). You state Exhibit B2 pertains to an active criminal investigation or prosecution. 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 Exhibit B2.

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). Thus, with the exception of the basic information, the department may withhold Exhibit B2 under section 552.108(a)(1) of the Government Code.

You seek to withhold the basic information in Exhibit B2 under common-law privacy. 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. This section 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. This office has also 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. Open Records Decision No. 393 at 2 (1983). However, we note the victim in Exhibit B2 is identified by a pseudonym, and the pseudonym sufficiently protects the privacy interests of that individual.

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<sup>3</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

Upon review, we conclude the basic information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

In summary, the department must continue to rely on Open Records Letter No. 2015-24446 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, which must be released, the department may withhold Exhibit B2 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/bw

Ref: ID# 655188

Enc. Submitted documents

c: Requestor  
(w/o enclosures)