



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-06125

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# 650772 (COSA File# W152117).

The City of San Antonio (the "city") received a request for all police department (the "department") offense reports for a specified address from a specified time period. You state the city will release 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.

Initially, we note the submitted information includes the dates of birth of living public citizens. In Open Records Letter No. 2016-08566 (2016), this office issued a previous determination to the city authorizing it to withhold dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code). Therefore, the city must withhold the dates of birth in the submitted information in accordance with the previous determination issued in Open Records Letter No. 2016-08566.

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 report numbers 2015-0496717 and 2016-0020828 pertain to open criminal investigations. Based upon this representation, we conclude that 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 (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 report numbers 2015-0496717 and 2016-0020828.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 2015-0316409, 2015-0514312, 2015-1014767, and 2015-1015140 pertain to closed criminal investigations that concluded in results other than conviction or deferred adjudication. Thus, section 552.108(a)(2) is applicable to report numbers 2015-0316409, 2015-0514312, 2015-1014767, and 2015-1015140.

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*. *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 city may withhold report numbers 2015-0496717 and 2016-0020828 under section 552.108(a)(1) of the Government Code and report numbers 2015-0316409, 2015-0514312, 2015-1014767, and 2015-1015140 under section 552.108(a)(2) 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 of the Government Code also 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the remaining information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*.

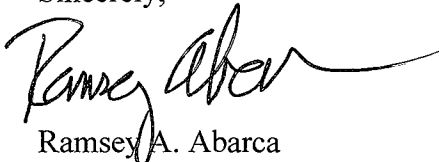
Accordingly, the city must withhold the information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the dates of birth in the submitted information in accordance with the previous determination issued in Open Records Letter No. 2016-08566. With the exception of the basic information, which must be released, the city may withhold report numbers 2015-0496717 and 2016-0020828 under section 552.108(a)(1) of the Government Code and report numbers 2015-0316409, 2015-0514312, 2015-1014767, and 2015-1015140 under section 552.108(a)(2) of the Government Code. The city must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 650772

Enc. Submitted documents

c: Requestor
(w/o enclosures)