



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2017

Mr. Justin Pruitt
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2017-06726

Dear Mr. Pruitt:

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# 653356 (File No. 1530).

The City of Lubbock (the "city") received a request for a specified police report. The city 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.

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 city states the submitted information relates to a pending criminal investigation or prosecution. 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. 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 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 city may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

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, 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. Upon review, we find none of the basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the basic information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

However, we note the requestor is a representative of the adjutant general of the Texas military forces and has a right of access to some of the information at issue. See Gov't Code §437.001(2) (“[a]djutant general’ means the military commander of the Texas military forces.”), (13) (“‘Texas Military Department’ means the state agency charged with administrative activities in support of the Texas military forces.”), (15) (“‘Texas National Guard’ means the Texas Army National Guard and the Texas Air National Guard.”). Section 411.121(b)(1) provides, “[t]he adjutant general is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by [DPS] that relates to a person who is: (1) a member of the Texas military forces[.]” *Id.* § 411.121(b)(1). In addition, section 411.087(a)(2) of the Government Code reads as follows:

- (a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

¹As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.


Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). The requestor states he is seeking information about a member of the Texas Army National Guard. Thus, the requestor is authorized to obtain the submitted CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(1) of the Government Code. *See id.* § 411.087(a)(2), .121(b)(1); *see also id.* § 437.001(14) (“Texas military forces” means the Texas National Guard, the Texas State Guard, and any other military force organized under state law.”) A specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).* Consequently, the department must release the submitted CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(1) of the Government Code.

To conclude, the department must release the submitted CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(1) of the Government Code. With the exception of basic information, which the department must also release, the department may withhold the remaining information 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, 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# 653356

Enc. Submitted documents

c: Requestor
(w/o enclosures)