



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Ms. Kelley Messer
First Assistant City Attorney
City of Abilene
P. O. Box 60
Abilene, Texas 79604-0060

OR2017-09901

Dear Ms. Messer:

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 656518.

The Abilene Police Department (the "department") received two requests for information pertaining to a named individual, to include four specified police reports. 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.

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). You state that criminal charges are pending with respect to the matters at issue in case numbers 17-002480 and 17-002536. Accordingly, we conclude the release of case numbers 17-002480 and 17-002536 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).

However, 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*, and includes a detailed description of the offense. 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*). Thus, with the exception of basic information, the department may withhold case numbers 17-002480 and 17-002536 under section 552.108(a)(1) of the Government Code. However, with regard to call sheet numbers 17015296 and 17016419, we find you have not demonstrated release of this information would interfere with the detection, investigation, or prosecution of crime. Accordingly, the department may not withhold call sheet numbers 17015296 and 17016419 under section 552.108(a)(1). You also raise section 552.101 of the Government Code in conjunction with common-law privacy for this information, so we will address your argument under these provisions for call sheet numbers 17015296 and 17016419. We will also address common-law privacy for the basic information in case number 17-002536.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we agree a portion of the information contained in call sheet numbers 17015296 and 17016419, as well as a portion of the basic information in case number 17-002536, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked in call sheet numbers 17015296 and 17016419, as well as the basic information in case number 17-002536 we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the date of birth of a public citizen in call sheet numbers 17015296 and 17016419 under section 552.101 in conjunction with common-law privacy. None of the remaining information in call sheet numbers 17015296 and 17016419 is protected by common-law privacy, and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by statute, including section 411.192 of the Government Code, which provides, in relevant part, as follows:

(a) The Texas Department of Public Safety ["DPS"] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a)-(b). The information at issue contains concealed handgun license information that the department appears to have obtained from DPS, which we have marked. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code.

Finally, we note a portion of call sheet number 17016419 is subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked in call sheet number 17016419 under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must generally be released, the department may withhold case numbers 17-002480 and 17-002536 under section 552.108(a)(1) of the Government Code. In releasing basic information from case number 17-002536, the department must withhold the information we have marked under common-law privacy. The department must also withhold the information we have marked under common-law privacy, as well as the public citizen's date of birth, in call sheet numbers 17015296 and 17016419 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The remaining information in call sheet numbers 17015296 and 17016419 must be released to the requestors.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 656518

Enc. Submitted documents

c: Requestor
(w/o enclosures)