



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2017

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2017-16912

Dear Mr. Hernandez:

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# 668356.

The Edinburg Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 the information you marked pertains to an active criminal prosecution. Based on this 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

¹Although you also raise section 552.130 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

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 the information at issue.

However, section 552.108 of the Government Code does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. See ORD 127 at 3-4. In this instance, you seek to withhold the narrative portion of the report at issue under section 552.108(a)(1). The remaining portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. See *id.* Accordingly, we determine the department must release a sufficient portion of the narrative to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Accordingly, with the exception of basic information, which must be released, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.²

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. 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. 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, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, which must be released, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the information you marked under section 552.101 of

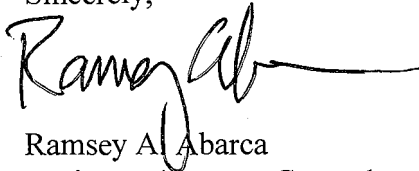
²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

the Government Code in conjunction with common-law privacy. The department must release the remaining information.³

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 Al Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 668356

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to some of the information being released. Gov't Code § 552.023. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.