



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 15, 2017

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2017-18531

Dear Ms. Pemberton:

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# 670947 (ID# W022472, W022535 & W022662).

The City of Killeen (the "city") received three requests from different requestors for information pertaining to a specified incident, a specified report, and a specified arrest. You state you have released some of the requested 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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 (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).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information at issue must be withheld in its entirety to protect the individual's privacy. In this instance, report number 17-006197 reveals the second requestor knows the identity of the individual involved as well as the nature of the information at issue. Therefore, withholding only the individual's identity or certain details of the incident from the second requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold report number 17-006197 in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

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 number 17-006197 relates to a pending criminal investigation. Based upon this representation and our review, we find 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) (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(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 number 17-006196 relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to report number 17-006196.

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*. *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, you may withhold report number 17-006197 under section 552.108(a)(1) of the Government Code and report number 17-006196 under section 552.108(a)(2) of the Government Code from the first and third requestors.


As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See ORD 455. Upon review, we find the information we have marked in report number 17-006197 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing the basic information from report number 17-006197 to the first and third requestors, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold report number 17-006197 in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report number 17-006197 under section 552.108(a)(1) of the Government Code and report number 17-006196 under section 552.108(a)(2) of the Government Code from the first and third requestors. In releasing the basic information from report number 17-006197 to the first and third requestors, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the first and third 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,


Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 670947

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)