



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 6, 2017

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2017-20331

Dear Ms. Ayala:

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# 677487 (OGC# 176317).

The University of Texas at Arlington (the "university") received a request for all police reports pertaining to incidents involving guns during a specified time period. You state the university is releasing some information to the requestor. 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)(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 2016-00651 and 2016-00862 pertain to ongoing criminal investigations by the university's police department. Based on your representations and our review, 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 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 2016-00651 and 2016-00862.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 2015-00946 and 2015-01050 pertain to closed cases that did not result in convictions or deferred adjudications. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to report numbers 2015-00946 and 2015-01050.

We note, and you acknowledge, 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). We note basic information includes, among other items, a sufficient portion of the narrative to include a detailed description of the offense, the identity and description of the complainant, and a description of the property involved. *See* ORD 127. In this instance, you seek to withhold the submitted information, consisting of the narrative portions of the reports at issue, under sections 552.108(a)(1) and 552.108(a)(2). Although you indicate the university has released some of the basic information pertaining to these reports, we determine the university must release a sufficient portion of the narrative to encompass a detailed description of the offense, the identity and description of the complainants, and a description of the property involved to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of the basic information, the university may withhold report numbers 2016-00651 and 2016-00862 under section 552.108(a)(1) of the Government Code and may withhold report numbers 2015-00946 and 2015-01050 under section 552.108(a)(2) of the Government Code.¹

You claim portions of the basic information at issue are subject to section 552.101 of the Government Code, which 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 common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

highly objectionable to a reasonable person, and (2) is 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 met. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we conclude the information you marked within the basic information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim some of the remaining basic information is protected by the common-law informer's privilege. Section 552.101 of the Government Code encompasses the common-law informer's privilege, which Texas courts have long recognized. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. See ORD 208 at 1-2.

You assert portions of the remaining basic information identify complainants who reported potential violations of law to the university's police department. We have no indication the subjects of the complaints know the identities of the complainants. Based upon your representations and our review, we conclude the university has demonstrated the applicability of the common-law informer's privilege to the information at issue. Therefore, the university may withhold the identity of the complainants, which we marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of basic information, which must be released, the university may withhold report numbers 2016-00651 and 2016-00862 under section 552.108(a)(1) of the Government Code and may withhold report numbers 2015-00946 and 2015-01050 under section 552.108(a)(2) of the Government Code. In releasing the basic information, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy, and the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 677487

Enc. Submitted documents

c: Requestor
(w/o enclosures)