



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2017

Ms. Michelle T. Rangel
Assistant County Attorney
County of Fort Bend
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2017-20770

Dear Ms. Rangel:

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# 675076.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual, including specified incidents. 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.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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find the present request, in part, requires the sheriff's office to compile unspecified law enforcement records concerning the named individual. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, the requestor asks for information pertaining to specified incidents. Because the requestor specifically asks for this information, it is not part of a compilation of any individual's criminal history and may not be withheld on that basis. We note you have submitted information pertaining to the specified incidents. Therefore, this information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

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 14-11408, 14-7240, and 14-34126 pertain to pending criminal prosecutions. Based on your 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 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 14-11408, 14-7240, and 14-34126.

However, we note 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 detailed description of the offense. *See* ORD 127 at 3-4. However, basic information does not include dates of

birth or the identity of the victim, unless the victim is the complainant. *See id.* Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold report numbers 14-11408, 14-7240, and 14-34126 under section 552.108(a)(1) of the Government Code.²

You claim the basic information is protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.* at 685. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information).

Upon review, we find the basic information contains identifying information of sexual assault victims. This information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing basic information, the sheriff's office must withhold the identifying information of the sexual assault victims under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the sheriff's office has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the sheriff's office may withhold report numbers 14-11408, 14-7240, and 14-34126 under section 552.108(a)(1) of the Government Code. In releasing basic information, the sheriff's office must withhold the identifying information of the sexual assault victims under section 552.101 of the Government Code in conjunction with common-law privacy.

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.

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

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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 675076

Enc. Submitted documents

c: Requestor
(w/o enclosures)