



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2017

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

OR2017-23913

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# 684700.

The Edinburg Police Department (the "department") received a request for a specified incident report. The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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). The department states the information it has marked under section 552.108(a)(1) relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information 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).

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*). Basic information includes a detailed description of the offense and the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. See ORD 127 at 3-4. We note some of the information that the department has marked under section 552.108(a)(1) consists of basic information. Thus, with the exception of basic information, the department may generally withhold the information it has marked under section 552.108(a)(1) of the Government Code.¹

However, we note the requestor is a representative of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code allows for DFPS to obtain criminal history record information ("CHRI") concerning an individual who is the subject of a report of abuse or neglect of a child. See Gov't Code § 411.114(a)(4), (a)(2)(I). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." See *id.* § 411.082(2).

The requestor does not state whether the offender listed in the submitted information is a suspect in a report of abuse or neglect of a child. Therefore, we are unable to determine whether section 411.114 of the Government Code gives the requestor a right of access to the CHRI in the submitted information, and we must rule conditionally. See *id.* § 411.114; see also *id.* § 411.082(2). Accordingly, if the offender in the submitted information is a suspect in a report of abuse or neglect of a child, then the department must release CHRI pertaining to the offender at issue. See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the offender in the submitted information is not a suspect in a report of abuse or neglect of a child, then the department is not required to release CHRI on that ground.

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 the *Industrial Foundation* decision. *Id.* at 683.

¹As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

Additionally, the Third 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 find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Because one of the individuals at issue in the submitted information has been de-identified, the privacy interest in that individual's date of birth is sufficiently protected, and the department may not withhold it under common-law privacy. We also find the remaining information is not confidential under common-law privacy. Accordingly, the department may not withhold any of the remaining information under section 552.101 on that ground.

In summary, with the exception of basic information, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code; however, the department must release CHRI pertaining to the offender at issue pursuant to section 411.114 of the Government Code if the offender is a suspect in a report of abuse or neglect of a child. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sb

Ref: ID# 684700

Enc. Submitted documents

c: Requestor
(w/o enclosures)