



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2017

Ms. Kristen Lee
Assistant County Attorney
Harris County
Anderson Clayton Building
1310 Prairie, Suite 500
Houston, Texas 77002-1901

OR2017-27495

Dear Ms. Lee:

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# 692826 (C.A. File # 17PIA0704).

The Harris County Constable's Office, Precinct Four (the "constable's office"), which you represent, received a request for information pertaining to a specified incident. The constable's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the constable's office claims 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). The constable's office states the submitted information pertains to an active criminal investigation. 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 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 submitted information.

However, we note 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 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of the victim, but does not include dates of birth. See ORD 127 at 3-4. Thus, with the exception of the basic information, the constable's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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 demonstrated. See *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 constable's office argues the basic information is considered highly intimate or embarrassing and is not of legitimate concern to the public. However, the requestor is a legal representative of the individual whose privacy interest is at issue. See Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to her client that would otherwise be confidential under common-law privacy. Accordingly, the constable's office may not withhold any portion of the basic information from this requestor under section 552.101 on the basis of common-law privacy.

In summary, with the exception of the basic information, which must be released to this requestor, the constable's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

¹We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the constable's office receives another request for the same information from a different requestor, the constable's office must again seek a decision from this office.

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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/gw

Ref: ID# 692826

Enc. Submitted documents

c: Requestor
(w/o enclosures)