



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2017

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2017-28017

Dear Ms. Cost:

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# 687506 (PIR # 17-6120).

The Texas Department of Public Safety (the "department") received a request for all reports of closed investigations initiated by two named Texas Rangers during a specified time period, with the exception of specified reports.¹ You state the department will release 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.

Initially, we note some of the submitted information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2016-21040 (2016) and 2017-03820 (2017). We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, to the extent the

¹You inform us the department sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The department informs us it received the required deposit on September 25, 2017. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

submitted information is identical to the information previously requested and ruled upon, the department must continue to rely on Open Records Letter Nos. 2016-21040 and 2017-03820 as previous determinations and withhold or release the identical information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the submitted information is not subject to the previous rulings, we will consider your arguments against disclosure of the information at issue.

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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Thus, the information at issue is confidential under section 261.201. Accordingly, the department must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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). Generally, 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 the reports you marked relate to ongoing criminal investigations, and release of the information would interfere with the investigation and prosecution of the case. Based upon this representation and our review, we conclude the release of the 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 (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 information at issue.

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also 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 *Industrial Foundation*. *Id.* at 683.

The remaining information includes reports involving alleged sexual assaults. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses

must be withheld). The 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.).

In this instance, we find you have not demonstrated, nor does it otherwise appear, these are situations in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the reports at issue under section 552.101 of the Government Code on that basis. Upon review, however, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the some of the victims whose information is at issue are identified by pseudonyms. Thus, these victims' privacy is sufficiently protected, and the department may not withhold the pseudonyms of the victims at issue under section 552.101 of the Government Code on the basis of common-law privacy. Furthermore, to the extent the dates of birth in the remaining information pertain to individuals who have been de-identified, or are identified solely by a pseudonym, we find the privacy rights of these individuals have been sufficiently protected. Thus, the dates of birth belonging to these individuals may not be withheld under section 552.101 on the basis of common-law privacy. Accordingly, the department must withhold the identities of the victims of sexual assault not identified solely by a pseudonym and all identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate any of the remaining information is subject to common-law privacy, and it may not be withheld under section 552.101 on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.³ Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find some of the remaining information may be subject to section 552.1175. Accordingly, to the extent the information we marked relates to currently licensed peace officers who have elected to restrict access to their information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code. *See Open Records Decision No. 364 (1983)*. Conversely, to the extent the individuals whose information is at issue are not currently licensed peace officers or have not elected to restrict access to their information in

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

accordance with section 552.1175(b), the department may not withhold the marked information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon, the department must continue to rely on Open Records Letter Nos. 2016-21040 and 2017-03820 as previous determinations and withhold or release the identical information at issue in accordance with those rulings. To the extent the submitted information is not subject to the previous rulings, (1) the department must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) with the exception of basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code; (3) the department must withhold the identities of the sexual assault victims not identified solely by a pseudonym and all identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (4) to the extent the information relates to currently licensed peace officers who have elected to restrict access to their information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code; (5) the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and (6) the department must release the remaining information.⁴

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

⁴We note the information being released includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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 black ink, appearing to read 'KH', is written over the word 'Sincerely,'.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 687506

Enc. Submitted documents

c: Requestor
(w/o enclosures)