March 21, 2018

Ms. Judith N. Benton  
Assistant City Attorney  
Legal Services  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

Dear Ms. Benton:

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# 700350 (Waco Ref# LGL 18-001).

The Waco Police Department (the “department”) received a request for all information pertaining to two specified police reports. You state you released some information responsive to the request, but made redactions as permitted by section 552.130 of the Government Code. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the raised arguments and reviewed the submitted representative sample of information.  

1Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See id. § 552.130(d), (e).

2This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize the withholding of, any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).
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 indicate the submitted information pertains to active criminal investigations. 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 Pub’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, as you acknowledge, 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). Thus, with the exception of the basic information, the department may withhold the information you have marked 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 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 court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. 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.). We note the requestor has a right of access to information that pertains to her pursuant to section 552.023 of the Government Code. See Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in Industrial Foundation. Therefore, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.
In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.³

Next, the department asks us to issue a previous determination permitting the department to withhold information subject to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Houston Chronicle v. Matta, 767 S.W.2d 695, 698 (Tex. 1989) (acknowledging this office has authority under section 552.301 of the Government Code to decide what constitutes a previous determination); Open Records Decision No. 673 (2001) (describing the two types of previous determinations). We note section 552.011 of the Government Code states “[t]he attorney general shall maintain uniformity in the application, operation, and interpretation” of the Act, chapter 552 of the Government Code. Gov’t Code § 552.011. Pursuant to this legislative mandate, section 552.011 grants the attorney general the authority to “prepare, distribute, and publish any materials, including detailed and comprehensive written decisions and opinions, that relate to or are based on” the Act. Id. We further note the Act requires governmental bodies to promptly release public information requested under the Act within a reasonable time, without delay. Id. § 552.221(a); Open Records Decision No. 664 at 5 (2000).

With the foregoing in mind and upon due consideration, we issue this ruling, which constitutes a previous determination allowing the department to withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting an attorney general decision, so long as the department has not previously received a request for the information from the same requestor in the manner described below. See ORD 673. This decision is intended to encourage the prompt release of requested public information by increasing the efficiency of the review process under the Act by clearly identifying information the department may withhold under the circumstances delineated below. See Gov’t Code §§ 552.011, .221; Open Records Decision Nos. 684 (2009), 673.

Accordingly, the department may withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting a ruling from this office in the following circumstances:

1. the department makes a good faith determination that the information at issue relates to the detection, investigation, or prosecution of crime.

³We note the requestor has a right of access to some of the information being released in this instance. See Gov’t Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.
and the release of the information would interfere with the detection, investigation, or prosecution of an open or pending criminal matter;

2. the department will release at least the basic information about an arrested person, an arrest, or a crime (the "releasable information") from the requested information;

3. the department will produce the releasable information to the requestor pursuant to the requirements of the Act within five business days after the date the request for information was received;

4. the department will provide the requestor with the notice included in Appendix A of this ruling when the department responds to the request pursuant to the requirements of this previous determination; and

5. the department has not previously received a request for the same information from the same requestor after the department has provided the requestor with the releasable information.

See Gov't Code § 552.011. If any of the above circumstances change—or any other law, facts, or circumstances involving the requestor or the status of the requested information changes—the department may not rely upon this ruling as a previous determination to withhold the information at issue. See ORD 673 at 7. Additionally, the department may not rely on this previous determination in response to requests in which basic information is not responsive. For example, no basic information is at issue in a request for only a dashboard camera video recording or 9-1-1 call audio recording. Thus, the department may not rely upon this previous determination in response to those types of requests. Furthermore, this previous determination does not apply to situations in which other law may require some or all of the information at issue to be disclosed. See, e.g., Crim. Proc. Code arts. 2.1396 (detailing right of access to videos made in connection with various types of driving while intoxicated offenses), 2.29 (detailing right of access to written report to law enforcement agency of alleged violation of Penal Code section 32.51); Gov't Code §§ 411.081-.1410 (detailing rights of access to videos made in connection with various types of driving while intoxicated offenses), 560.002(1)(A) (detailing right of access to fingerprints and other biometric identifiers); Transp. Code §§ 550.065 (detailing rights of access to crash report forms), 724.018 (detailing right of access to blood or breath specimen analysis results). We also note this previous determination does not permit the disclosure of basic information in those instances in which the entirety of the information at issue must be withheld. See, e.g., Fam. Code §§ 58.008 (detailing circumstances under which certain information related to juvenile offenders must be withheld in its entirety), 261.201 (detailing circumstances under which certain information related to investigations of child abuse or neglect must be withheld in its entirety); Open Records Decision No. 393 (1983) (stating, because the identifying information of a sexual assault victim was inextricably intertwined with other releasable information, the governmental body
was required to withhold the information in its entirety). We further note this previous determination does not permit the department to withhold citations; DIC-24 statutory warnings; DIC-25 notices of suspension; criminal trespass warnings; notices of code violations; triplicate forms; or information subject to section 552.007 or section 552.022 of the Government Code, other than information subject to section 552.022(a)(1). See Gov’t Code §§ 552.007, .022(a)(1)-(18), .108(a)(1). However, the use of this previous determination does not preclude the department from withholding information pursuant to other statutory authority or previous determinations that apply to the department. See, e.g., id. §§ 552.1175(1), .130(c), .136(c), .147(b); ORD 684.

If the department’s use of this previous determination does not fall within all of the circumstances delineated above, the requirements of the Act apply, including section 552.301 of the Government Code, and deadlines under the Act run from the date the department received the initial written request for information. See Gov’t Code § 552.301(a); Mattox, 767 S.W.2d at 698. Consequently, misapplication of this previous determination may result in the presumption the requested information is public. See Gov’t Code § 552.302. Thus, if the department is unsure as to the applicability of this previous determination to information responsive to a request for information, the department should request a ruling from this office. Additionally, this office may modify or withdraw this previous determination for any reason, including, but not limited to, misapplication of this previous determination. See id. § 552.011; Mattox, 767 S.W.2d at 698; see also Open Records Decision Nos. 485 at 3 (1987), 673 at 5. Finally, if the department later requests a ruling from this office in response to a second request for the same information from the same requestor, the department should notify this office it relied upon this previous determination in its response to the initial request.

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,

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som
Ref: ID# 700350

Enc. Submitted documents

c: Requestor
   (w/o enclosures)
Appendix A

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Date

Requestor name
Requestor address 1
Requestor address 2
Requestor city, state zip

Dear M:

NOTICE:

On [date], we received your public information request for [description of information requested], dated [date request written] (the “request”). In order to promote governmental efficiency and encourage the prompt release of information, as required by the Public Information Act, we have relied upon Open Records Letter No. 2018-06462 (2018) in responding to your request. We do so within five business days of your request.

The department has made a good faith determination the information you requested:

• deals with the detection, investigation, or prosecution of crime and the release of the records would interfere with the detection, investigation, or prosecution of an open or pending criminal matter.

This information is subject to section 552.108(a)(1) of the Government Code. The department has also determined you have not previously requested this information. Therefore, pursuant to the previous determination granted by the Office of the Attorney General in Open Records Letter No. 2018-06462, the department is releasing some information to you, and is withholding the remaining responsive information subject to section 552.108(a)(1) of the Government Code.

Please note, we are withholding the following specified types of information:

☐ Incident report (except basic information)
☐ Witness/suspect interview(s)
☐ Video recording(s)
☐ Audio recording(s)
☐ Other: (specify documents withheld)

If you have questions regarding the use of this previous determination, please call the department at XXX-XXX-XXXX, or for more information concerning your rights and the responsibilities of the department, please visit the Office of the Attorney General’s website at https://www.texasattorneygeneral.gov/og/information-about-552.108(a)-previous-determinations, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. You may also review general information about the Public Information Act, including the types of information included in basic information, in the 2018 Public Information Handbook at http://www.texasattorneygeneral.gov/files/og/publicinfo_hb.pdf.

1 If you request this information a second time, the department must request a ruling from the Office of the Attorney General (the “OAG”) in order to withhold the information. See Open Records Letter No. 2018-06462.