



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2019

Mr. Robert L. Dillard, III
Counsel for the City of University Park
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2019-00140

Dear Mr. Dillard:

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# 750431 (Ref No. 104697).

The University Park Police Department (the "department"), which you represent, received a request for information pertaining to a named individual over a specified period of time and the specified arrest of a second named individual. You state you have released basic information under section 552.108(c) of the Government Code. *See* Gov't Code § 552.108(c). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1018 of the Government Code. We have considered the exceptions you claim 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[.]" *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the requested information would interfere with law enforcement. *Id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1976). You state Exhibit C pertains to pending criminal investigation. Based on your representation and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of a crime. *See*

Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court notes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 611 (1992). Thus, the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

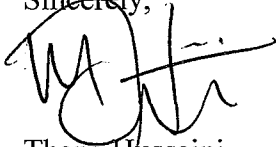
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 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.). This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. Although you assert Exhibit D must be withheld in its entirety pursuant to common-law privacy, we find this is not a situation where all of this information must be withheld to protect any individual’s privacy interest. Nevertheless, upon review, we find portions of the information at issue satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked and the public citizens’ dates of birth you marked under section 552.101 in conjunction with common-law privacy. We find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold the remaining information in Exhibit D under section 552.101 on that basis and must release it.

In summary, the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked and the public citizens’ dates of birth you 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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', written over a horizontal line.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 750431

Enc. Submitted documents

c: Requestor
(w/o enclosures)