



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 8, 2019

Ms. Jennifer Slack  
Lubbock County District Attorney's Office  
904 Broadway, Second Floor  
Lubbock, Texas 79401

OR2019-00421

Dear Ms. Slack:

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# 745368 (ORR# 1101).

The Lubbock County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a named individual, including specified incident reports. The district attorney's office claims the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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. This section encompasses section 58.005 of the Family Code, which provides, in part, the following:

(a) This section applies only to the inspection, copying, and maintenance of a record concerning a child and to the storage of information from which a record could be generated, including personally identifiable information, information obtained for the purpose of diagnosis, examination, evaluation, or treatment of the child or for making a referral for treatment of the child, and other records or information, created by or in the possession of:

(1) the Texas Juvenile Justice Department;

(2) an entity having custody of the child under a contract with the Texas Juvenile Justice Department; or

(3) another public or private agency or institution having custody of the child under order of the juvenile court, including a facility operated by or under contract with a juvenile board or juvenile probation department.

(a-1) Except as provided by Article 15.27, Code of Criminal Procedure, the records and information to which this section applies may be disclosed only to:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) a governmental agency if the disclosure is required or authorized by law;

(5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(6) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or

(7) with permission from the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Fam. Code § 58.005(a), (a-1). Information subject to section 58.005(a) may only be disclosed to certain listed individuals. *Id.* § 58.005(a-1). The district attorney's office does not inform us, and the submitted information does not itself reflect, that any of this information was "obtained for the purpose of diagnosis, examination, evaluation, or treatment of the child or for making a referral for treatment of the child" by one of the listed entities. *Id.* § 58.005(a). Further, the district attorney's office does not inform us, and the submitted information does not reflect, the information at issue consists of records created

by or in the possession of any of the listed entities. Accordingly, the submitted information is not confidential under section 58.005 of the Family Code and the district attorney's office not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also section 58.106 of the Family Code. However, subchapter B of chapter 58 of the Family Code, which contains section 58.106, pertains to the administration of the juvenile justice information system by the Texas Department of Public Safety. *See id.* § 58.102. Because the submitted information was not requested from the Texas Department of Public Safety, we conclude section 58.106 of the Family Code is not applicable it. Accordingly, the submitted information is not confidential under section 58.106 of the Family Code and the district attorney's office not withhold it under section 552.101 of the Government Code on that basis.

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 district attorney's office states the submitted information relates to pending criminal investigations or prosecutions. 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*). We note 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. Thus, with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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

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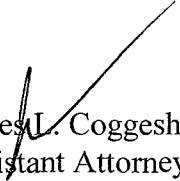
<sup>1</sup>As our ruling is dispositive, we do not address the other arguments of the district attorney's office to withhold this information.

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. Upon review, we find none of the basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the basic information is not confidential under common-law privacy, and the district attorney's office may not withhold it under section 552.101 on that ground. Thus, the district attorney's office must release basic information, but may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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](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/mo

Ref: ID# 745368

Enc. Submitted documents

c: Requestor  
(w/o enclosures)