



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 2, 2019

Ms. Claudene Marshall  
Assistant General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840-7896

OR2019-21424

Dear Ms. Marshall:

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# 780714 (ORR# C001132-052319).

Texas A&M University (the "university") received a request for a specified incident report. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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[.]" 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 state the submitted information pertains to a pending criminal investigation being conducted by the university's police department. We note the submitted information includes a criminal trespass warning. Because this document was provided to the suspect, we find that release of the criminal trespass warning will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the criminal trespass warning may not be withheld under section 552.108(a)(1). However, based upon your representations, we

conclude the release of the remaining 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 remaining information you have marked. Therefore, with the exception of the criminal trespass warning, the university 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 from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov't Code § 552.101. This section 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). We also find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the university must withhold the information we have marked and the date of birth you have marked in the criminal trespass warning under section 552.101 of the Government Code in conjunction with common-law privacy.

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. Upon review, we find the university must withhold the motor vehicle record information you have marked in the criminal trespass warning under section 552.130 of the Government Code.

In summary, with the exception of the criminal trespass warning, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The university must withhold the information we have marked and the date of birth you have

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<sup>1</sup>The 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 at 2 (1987), 480 at 5 (1987).

marked in the criminal trespass warning under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information you have marked in the criminal trespass warning under section 552.130 of the Government Code. The university 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/gw

Ref: ID# 780714

Enc. Submitted documents

c: Requestor  
(w/o enclosures)