



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 13, 2019

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 South Lamar, 6 Floor 6 W
Dallas, Texas 75215

OR2019-22328

Dear Ms. Armstrong:

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# 780374 (ORR Nos. D014657-052119, D014784-052219, D015684-053119, and D016621-060919).

The Dallas Police Department (the "department") received four requests from different requestors for specified information pertaining to an incident involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the fourth requestor seeks only the arrest report related to the specified incident. Thus, the body worn camera and dash camera recordings and the 9-1-1 audio recordings are not responsive to the fourth request, and the department need not release this information in response to the fourth request.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note portions of the submitted information are subject to article 2.1396 of the Code of Criminal Procedure, which provides,

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person's breath or blood is taken.

Crim Proc. Code art 2.1396. The submitted information includes video recordings made by or at the direction of officers employed by the department that contain footage of the first requestor's client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Thus, the first requestor is entitled to receive these portions of the video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert the information at issue is excepted from disclosure under section 552.108 of the Government Code, a statutory right of access prevails over the common-law and the Act's general exceptions to public disclosure. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). We note section 552.108 is a general exception under the Act. Accordingly, the requestor's statutory access under article 2.1396 prevails over the department's arguments. Therefore, the department may not withhold from the first requestor any portion of the submitted video recordings that depicts the stop, the arrest, the conduct of the first requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken under section 552.108 of the Government Code.

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: (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 remaining information you marked relates to an open criminal investigation. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publishing 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) of the Government Code is applicable to the information you marked and indicated and it may be withheld on that basis.²

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(a). We note section 552.130 protects personal privacy. Accordingly, the first, second, and third requestors have rights of access to their clients’ motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (“person or a person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the department must withhold the motor vehicle record information of an individual other than the respective clients of each requestor, which you marked, under section 552.130 of the Government Code.

Section 552.147 of the Government Code exempts from disclosure the social security number of a living person. Gov’t Code § 552.147. We note the social security number you mark belongs to the client of the first requestor. The first requestor has a right of access to his client’s social security number, and it may not be withheld from him under section 552.147. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles); ORD 481. Accordingly, the department may withhold the marked social security number from the remaining requestors under section 552.147 of the Government Code.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). However, we note the first and second requestors have a right of access to their clients’ birth dates. Additionally, the first and third requestors have a right of access to their clients’ financial information and the second requestor has a right of access to his client’s medical information. *See* Gov’t Code § 552.023(a); ORD 481 at 4.

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information that must be released to the requestors, 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 common-law privacy.

In summary, with the exception of any portion of the submitted video recordings that depicts the stop, the arrest, the conduct of the first requestor’s client, or a procedure in which a specimen of the requestor’s client’s blood or breath is taken, which must be released to the first requestor, the department may withhold the information you marked and indicated under section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information of an individual other than the respective clients of each requestor, which you marked, under section 552.130 of the Government Code. The department may withhold the marked social security number from the second, third, and fourth requestors under section 552.147 of the Government Code. With the exception of the information that must be released to the requestors, 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 common-law privacy; however, the department must release the appropriate client information to the respective requestor. The department must release the remaining information.³

³We note the requestors have special rights of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

Handwritten signature of Ashley Crutchfield in cursive script.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/mo

Ref: ID# 780374

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)