



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2019

Mr. Mark G. Mann
Senior Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2019-25119

Dear Mr. Mann:

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# 793075 (GCA19-0699 and GCA19-0700).

The Garland Police Department (the "department") received two requests from different requestors for a specified incident report. You state you have released some information to the first requestor. You state you will withhold the dates of birth you have marked pursuant to Open Records Letter No. 2017-22182 (2017).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim 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 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. The types of information considered intimate and embarrassing by

¹Open Records Letter No. 2017-22182 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy. Withholding only the individual's identity or certain details of the submitted information from the second requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the submitted information from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

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 information you have marked relates to a pending criminal prosecution. Based on your representation and our review, we find release of the information at issue 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, the department may withhold the information you have marked from the first requestor under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the submitted information from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you have marked from the first requestor under section 552.108(a)(1) of the Government Code and must release the remaining information to the first requestor.³

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

³We note the first requestor has a right of access to the information being released to her. *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). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 793075

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)