



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 13, 2019

Mr. Matthew Longoria
Counsel for City of Copperas Cove
Denton Navarro Rocha Bernal & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2019-31913

Dear Mr. Longoria:

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# 796670 (ORR# W005492 & W005529).

The City of Copperas Cove (the "city"), which you represent, received two requests from different requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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. 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, the entire report must be withheld to protect the individual's privacy. In this instance, the second requestor knows the identity of the individual involved.

Therefore, withholding only the individual's identity or certain details of the incident from this 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 city must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.¹ However, this is not a situation in which the entirety of the submitted information must be withheld from the first requestor on the basis of common-law privacy. Accordingly, we will consider your remaining arguments against disclosure with respect to the first requestor.

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). The city states the submitted information pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the 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, section 552.108(a)(1) is applicable to the submitted information.

However, we note 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 (1976) (summarizing types of information considered to be basic information). 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. We also note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of the basic information, the city may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code.²

Some of the basic information is protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at

¹ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information with respect to the second requestor.

² In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

683. Upon review, we find the identifying information of the victim satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the identifying information of the victim, which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has failed to demonstrate the remaining basic information is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold the remaining basic information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code. In releasing basic information to the first requestor, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 that reads "Meagan Hunter". The signature is written in a cursive, flowing style.

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/be

Ref: ID# 796670

Enc. Submitted documents

c: 2 Requesters
(w/o enclosures)