



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2019

Ms. Lindsey K. Rattikin
Assistant University Counsel
Southern Methodist University
P.O. Box 750132
Dallas, Texas 75275-0132

OR2019-35232

Dear Ms. Rattikin:

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# 801626.

The Southern Methodist University Police Department (the "department") received a request for information pertaining to sexual offenses pertaining to a specified time period. You state you released some information to the requestor. You claim some of the submitted information is not subject to the Act. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 51.212(f) of the Education Code reads as follows:

A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.

Educ. Code § 51.212(f). We understand the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. You state the requested records related to the Title IX

Harassment policy are generally maintained by the Southern Methodist University's Office of Institutional Access and Equity. Further, you represent the information at issue was not created for a law enforcement purpose. Upon review, we agree the information at issue is administrative in nature and does not relate solely to law enforcement activities. *See id.* § 51.212(f). Accordingly, we find the requested information regarding the Title IX Harassment Policy is not subject to disclosure pursuant to section 51.212(f) of the Education Code and need not be released to the 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 department states report number 181280 pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the release of report number 181280 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 report number 181280.

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 does not include dates of birth. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the department may withhold report number 181280 under section 552.108(a)(1) of the Government Code.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, 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.).

The remaining information pertains to reports of alleged sexual assaults. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Further, where the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. In this instance, the department seeks to withhold the entirety of the information at issue under section 552.101 in conjunction with common-law privacy. However, the department has not demonstrated, and we are not able to determine, the requestor knows the identities of the victims. Accordingly, the department may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis.

Upon review, we find some of the remaining information, including identifying information of the victims of sexual assault, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, some of the dates of birth pertain to individuals who are identified by pseudonyms or who will be de-identified under common-law privacy; thus, their privacy interests are protected, and the department may not withhold the dates of birth pertaining to de-identified individuals under section 552.101 on this basis. Accordingly, the department may withhold the dates of birth of public citizens who are not de-identified under section 552.101 in conjunction with common-law privacy. We find the department has not demonstrated the remaining information is information pertaining to an identifiable individual that is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold the remaining information under section 552.101 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.¹ *See* Gov't Code § 552.130. Accordingly, the department must withhold the driver's license number and state we marked under section 552.130 of the Government Code.

In summary, the requested information regarding the Title IX Harassment Policy is not subject to disclosure pursuant to section 51.212(f) of the Education Code and need not be

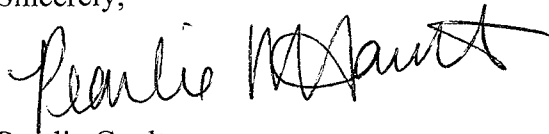
¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

released to the requestor. With the exception of basic information, the department may withhold report number 181280 under section 552.108(a)(1) of the Government Code. The department must withhold all public citizens' dates of birth pertaining to identifiable individuals and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license number and state we marked under section 552.130 of the Government Code. The remaining information must be released.

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 "Pearlie Gault". The signature is fluid and cursive, with a large initial "P" and "G".

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 801626

Enc. Submitted documents

c: Requestor
(w/o enclosures)