



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2019

Mr. Ty Taylor
Counsel for Texas Christian University
McDonald Sanders, P.C.
777 Main Street, Suite 1300
Fort Worth, Texas 76102

OR2019-35423

Dear Mr. Taylor:

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# 800894.

The Texas Christian University Police Department (the "department"), which you represent, received a request for information pertaining to suspected hate crimes during a specified time frame. You state you have released some information. You assert some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

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

(f) 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). You inform us the department is a campus police department of a private institution of higher education. *See id.* § 51.212(e), 61.003. Thus, you acknowledge 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. We understand the submitted information is maintained by the department. However, you assert some of the submitted information does not relate solely to law enforcement activities. You state some of the submitted information does not “reference . . . a penal code section violation” or “involve an investigation of a crime,” but rather involves incidents in which “only the university student code of conduct is implicated.” You further state that the department’s involvement in these cases was “strictly limited to lending assistance in support of the university disciplinary process.” You assert in these cases, “no crime was being investigated.” Thus, you argue that, in these cases, “it cannot reasonable be regarded that these investigations of possible student disciplinary violations [of the student code of conduct] relate ‘solely to law enforcement activities.’” Upon review, we agree Exhibits 13 and 17 do not relate solely to law enforcement. *See id.* Accordingly, this information is not subject to disclosure pursuant to section 51.212(f), and need not be released to the requestor.¹ However, upon review, we find the remaining information at issue involves possible criminal violations investigated by the department. *See* Penal Code §§ 22.01 (assault), 28.03 (criminal mischief), and 28.08 (graffiti). Thus, we find this information relates “solely to law enforcement activities.” *See* Educ. Code § 51.212(e), 61.003. Therefore, we will consider your arguments against disclosure of this information.

Section 552.108(a) 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). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). The department asserts Exhibits 2 through 12 relate to pending criminal investigations and their release would interfere with the investigation of the cases. Based upon this representation, we conclude the release of some 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 Exhibit 3. However, we note, with the exception of Exhibits 2 and 8, the remaining information at issue pertains to misdemeanors. *See* Penal Code §§ 22.01(a)(3) (assault by contact under section 22.01 of the Penal Code is a class C misdemeanor), 28.03(b)(1)-(3) (criminal mischief under section 28.03 of the Penal Code is Class A, B, or C misdemeanor), 42.07(c) (harassment under section 42.07 of the Penal Code is Class A or B misdemeanor). We further note the statute of limitations for the types of offenses in these reports is two years. *See* Crim. Proc. Code art. 12.02 (indictment for misdemeanor may be presented within two years from date of commission of offense, and not afterward). More than two years have elapsed since the events giving rise to the investigations in these reports. In addition, Exhibits 2 and 8 pertain

¹ As our ruling is dispositive, we do not address your alternative arguments to withhold this information.

to alleged terroristic threats. The longest possible statute of limitations for a terroristic threat is three years from the date of the commission of the offense. Code Crim. Proc. art. 12.01(8) (limitations on felony not otherwise listed in article 12.01 of Code of Criminal Procedure is three years from date of offense). More than three years have elapsed since the events giving rise to the investigations at issue in Exhibits 2 and 8. The department does not inform us any criminal charges were filed within the limitations period for these cases. Thus, we find the department has failed to demonstrate release of the information pertaining to these reports would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the department may not withhold any of the remaining information at issue under section 552.108(a)(1) of the Government Code.

However, we note, and you acknowledge, 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, among other items, the identity of the complainant. *See* ORD 127. Accordingly, with the exception of the basic information, we find the department may withhold Exhibit 3 under section 552.108(a)(1) of the Government Code.²

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibits 14, 15, 16, and 18 through 23 relate to closed cases that did not result in convictions or deferred adjudications. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to this information. We note, pursuant to the court's decision in *City of Carrollton v. Paxton*, 490 S.W.3d 187 (Tex. App.—Austin 2016, pet. denied), and the department's briefing, section 552.108(c) of the Government Code is not applicable in this instance. Therefore, the department may withhold Exhibits 14, 15, 16, and 18 through 23 under section 552.108(a)(2) of the Government Code.³

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

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

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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. 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.). However, we note an individual's name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not invasion of privacy). Further, we note the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Determinations under common-law privacy must be made on a case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983); *Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case). Upon review, we find the department must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the department may not withhold any of the remaining information 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 information we have marked consists of motor vehicle record information subject to section 552.130. Therefore, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the department may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

In summary, Exhibits 13 and 17 are not subject to disclosure pursuant to section 51.212(f) of the Education Code and need not be released to the requestor. With the exception of the basic information, which must be released, we find the department may withhold the information it has marked in Exhibit 3 under section 552.108(a)(1) of the Government Code. The department may withhold Exhibits 14, 15, 16, and 18 through 23 under section 552.108(a)(2) of the Government Code. The department must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle

record information we have marked under section 552.130 of the Government Code. The department 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 <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,



Erin Groff

Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 800894

Enc. Submitted documents

c: Requestor
(w/o enclosures)