



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2020

Mr. John C. West
General Counsel
Texas Department of Criminal Justice
4616 West Howard Lane, Suite 250
Austin, Texas 78728

OR2020-00350

Dear Mr. West:

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# 804398 (Ref. No. 2019.00165).

The Texas Department of Criminal Justice Office of the Inspector General (the "department") received a request for all information pertaining to a specified incident involving a named inmate. You state the department will redact certain information subject to section 552.117 of the Government Code pursuant to Open Records Letter No. 2005-01067 (2005).¹ You also state the department will redact certain information pursuant to section 552.1175(f) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134

¹ Open Records Letter No. 2005-01067 serves as a previous determination permitting the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether they comply with section 552.1175 of the Government Code, under section 552.117(a)(3) of the Government Code without requesting a decision from this office.

² Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See* Gov't Code § 552.1175(b), (f). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the present request for information because it was created after the date the department received the present request. This ruling does not address the public availability of any information that is not responsive to the present request for information and the department is not required to release such information in response to this request.

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 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 demonstrated. *See id.* at 681-82. We note incident report number 19-12648 pertains to an investigation regarding an alleged sexual assault. 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. Open Records Decision No. 393 at 2 (1983); *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). We note the requestor knows the identity of the alleged victim. Thus, in this instance, withholding only identifying information from the requestor would not preserve the victim’s common-law right to privacy. Accordingly, the department must withhold incident report number 19-12648 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.³

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). 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 at issue pertains to an ongoing criminal investigation. Based on your representations and our review, we conclude the release of the information

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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 remaining responsive 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 177 at 186-88; see also 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 dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. Accordingly, with the exception of the basic information, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.⁴

You assert portions of the basic information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. As noted above, section 552.101 of the Government Code encompasses the doctrine of 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 683. We note an individual's name and address are generally not highly intimate or embarrassing. See Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). Upon review, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold incident report number 19-12648 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, which must be released, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

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.

⁴ As our ruling is dispositive, we need not address the department's remaining arguments against disclosure, except to note basic information is generally not excepted under section 552.134 of the Government Code. See Gov't Code § 552.029(8) (basic information pertaining to alleged crime or use of force involving inmate not excepted under section 552.134).

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 'Blake Brennan', written in a cursive style.

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 804398

Enc. Submitted documents

c: Requestor
(w/o enclosures)