



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2020

Ms. Izzy Anderson
Assistant General Counsel
Houston Community College
P.O. Box 667517
Houston, Texas 77266-7517

OR2020-02894

Dear Ms. Anderson:

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# 809153 (RR_1777).

Houston Community College (the "college") received a request for a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1085, 552.115, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. 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); Open Records Decision No. 434 (1986). You state the submitted information pertains to a criminal investigation by the college's police department that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the submitted information.

However, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the college may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

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. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual at issue and the nature of the incident, the entire report must be withheld to protect the individual’s privacy. In this instance, although you seek to withhold the basic information in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entirety of the basic information must be withheld on the basis of common-law privacy. Upon our review, we find you have failed to demonstrate any portion of the basic information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the college may not withhold it under section 552.101 on this basis.

However, the requestor, who is a representative of the Texas Department of State Health Services (the “department”), asserts the department has a right of access to the information at issue under section 92.005 of the Health and Safety Code. Section 92.005 of the Health and Safety Code provides “[s]ubject to the confidentiality provisions of this subchapter, the department may collect, or cause to be collected, medical, demographic, or epidemiologic information from any medical or laboratory record or file to help the department in the epidemiologic investigation of injuries and their causes.” Health & Safety Code § 92.005. By its terms, section 92.005 applies to information from medical or laboratory records. The submitted information does not contain “medical, demographic, or epidemiologic information from any medical or laboratory record file.” Therefore, upon review, we find the department has failed to demonstrate it has a right of access to the information at issue under section 92.005 of the Health and Safety Code. Accordingly, with the exception of basic information, which must be released, the college may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹

¹ As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

As noted above, the requestor is a representative of the department. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. Thus, pursuant to the intergovernmental transfer doctrine, the college has the discretion to release to the requestor the submitted information that is subject to section 552.108. We note release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the college does not waive its interest in withholding this information by exercising its discretion under the interagency transfer doctrine.

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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/rm

Ref: ID# 809153

Enc. Submitted documents

c: Requestor
(w/o enclosures)