



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 10, 2020

Ms. Jennifer Burnett  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
210 West 7<sup>th</sup> Street  
Austin, Texas 78701

OR2020-03860

Dear Ms. Burnett:

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# 810719 (OGC Nos. 193474 and 193475).

The University of Texas Southwestern Medical Center (the "university") received two requests from the same requestor for information pertaining to theft or loss of controlled substances during a specified period of time. You state you released some information, including basic information pursuant to section 552.108(c) of the Government Code. *See Gov't Code* § 552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state you notified the United States Attorney's Office for the Northern District of Texas (the "attorney's office"); the United States Drug Enforcement Agency (the "DEA"); and the Texas State Board of Pharmacy (the "board") of their rights to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the attorney's office and the board. We have also received comments from the requestor. We have considered the submitted arguments and reviewed the submitted information, a portion of which is a representative sample.<sup>2</sup>

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<sup>1</sup> As of the date of this ruling, we have not received comments from the DEA.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision* Nos. 499 (1988), 497 (1988). This open records

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[.]” *Id.* § 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 university states some of the submitted information relates to pending criminal investigations by the university’s police department (the “department”). Additionally, the university states the attorney’s office objects to the release of the additional information you marked because it pertains to a pending criminal investigation. Based on your 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, the university may withhold the information you marked under section 552.108(a)(1) of the Government Code and the additional information you marked under section 552.108(a)(1) on behalf of the attorney’s office.<sup>3</sup>

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 information made confidential by other statutes, such as section 565.055 of the Occupations Code. Section 565.055 provides:

(a) The board or the board’s authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

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letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

- (1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;
- (2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;
- (3) to an entity in another jurisdiction that:
  - (A) licenses or disciplines pharmacists or pharmacies; or
  - (B) registers or disciplines pharmacy technicians or pharmacy technician trainees;
- (4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;
- (5) to a law enforcement agency;
- (6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or
- (7) to an entity that administers a board-approved pharmacy technician certification examination.

Occ. Code § 565.055. The board states the information you marked was compiled by the board in connection with an investigation of an alleged violation of the Texas Pharmacy Act or board rule. The board informs us the requestor is not entitled to this information pursuant to section 565.055(c). Therefore, based upon the board's representations and our review, we find the information you marked is confidential under section 565.055(b) of the Occupations Code, and must be withheld under section 552.101 of the Government Code.<sup>4</sup> See Open Records Decision No. 474 at 2-3 (1987) (construing predecessor statute).

Section 552.101 of the Government Code also 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*

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

*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). Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university may withhold the information you marked under section 552.108(a)(1) of the Government Code and the additional information you marked under section 552.108(a)(1) on behalf of the attorney's office. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 565.055(b) of the Occupations Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university 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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/be

Ref: ID# 810719

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)