



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Ms. Josi Diaz  
Assistant City Attorney  
City of Dallas  
1400 South Lamar, 6Floor 6W  
Dallas, Texas 75215

OR2020-12625

Dear Ms. Diaz:

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# 828216.

The Dallas Police Department (the "department") received three requests from the same requestor for three specified executive summaries. You claim some of the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). We note section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). Where a governmental body has custody of information that would otherwise qualify for exception

under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

The submitted information relates to internal investigations conducted by the department. Although you assert the submitted information relates to ongoing criminal investigations and prosecutions, the submitted information reveals the criminal investigations at issue are being conducted by other law enforcement agencies. Further, you have not provided representations from these law enforcement agencies that release of the information would interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold any portion of the submitted information 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.”<sup>1</sup> 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. This office has found that common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code. *See* Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. The information you marked consists of the personal information of an individual who was employed by the department and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is a currently-licensed peace

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<sup>1</sup>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).

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individual whose information is at issue is a currently-licensed peace officer as defined by article 2.12, the department must withhold the information it marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual whose information is at issue is not a currently-licensed peace officer as defined by article 2.12, the information you marked may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual whose information is at issue is not a currently-licensed peace officer, then the information the department marked may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual whose information is at issue is not a currently-licensed peace officer, but timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information it marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the department may not withhold the information it marked under section 552.117(a)(1).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Upon review, we find you failed to demonstrate the applicability of section 552.1175 to any of the information at issue. Therefore, the department may not withhold any of the information at issue under section 552.1175.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose information is at issue is a currently-licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information it marked under section 552.117(a)(2) of the Government Code. To the extent the individual whose information is at issue is not a currently-licensed peace officer, but timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information it marked under section 552.117(a)(1) 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,

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/mo

Ref: ID# 828221

Enc. Submitted documents

c: Requestor  
(w/o enclosures)