



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 28, 2020

Ms. Leighton Schubert
Executive Vice Chancellor and General Counsel
Blinn College District
902 College Avenue
Brenham, Texas 77833

OR2020-14874

Dear Ms. Schubert:

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# 829427.

The Blinn College District (the "district") received a request for video recordings, 911 calls, and reports related to a specified incident. You claim the submitted information is not subject to the Act pursuant to section 552.002(d) of the Government Code. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) of the Government Code reads as follows:

(a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

¹ Although you do not cite section 552.108 of the Government Code in your brief, we understand you to assert this exception based on your arguments.

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). However, you assert the submitted information is not subject to the Act pursuant to section 552.002(d) of the Government Code, which provides:

“Protected health information” as defined by Section 181.006, Health and Safety Code, is not public information and is not subject to disclosure under this chapter.

Id. § 552.002(d). Section 181.006 of the Health and Safety Code, in relevant part, states:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity[.]

Health & Safety Code § 181.006(1). Section 181.001(b)(2)(A) defines “covered entity,” in part, as any person who:

for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You do not assert the district is a covered entity and you have not explained how the information at issue consists of protected health information. Thus, we find you have failed to demonstrate the applicability of section 181.006 of the Health and Safety Code. Accordingly, we find the information at issue is subject to the Act, and the district must release it unless it falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302.

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 id.* § 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 the submitted information relates to a closed criminal investigation or prosecution that did not result in conviction or deferred adjudication. Based on this representation and our review, 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. *Id.* § 552.108(c). Basic information refers to the 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). Thus, with the exception of the basic information, the district may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

We understand you to raise section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code for the basic information. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by section 181.006 of the Health and Safety Code. Section 181.006 states, in relevant part:

[F]or a covered entity that is a governmental unit, an individual’s protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. However, as noted above, you do not assert the district is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate the basic information is subject to section 181.006 of the Health and Safety Code, and the district may not withhold it under section 552.101 of the Government Code on this basis.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. In addition, as we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the requested video recordings. *See generally* Occ. Code § 1701.661(a), (e).

In summary, with the exception of the basic information, which must be released, the district may withhold the submitted information under section 552.108(a)(2) 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.

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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/eb

Ref: ID# 829427

c: Requestor