



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2022

Ms. Leslie A. Whitten
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2022-03290

Dear Ms. Whitten:

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# 929103 (File No. A21-002314).

The College Station Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, the entire report must be withheld to protect the individual's privacy.

In this instance, the first requestor knows the identity of the victim. However, the victim in the information at issue is identified by pseudonym only and we are unable to determine whether the first requestor is the victim. Thus, the first requestor may have a right of access to private information pertaining to herself pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, to the extent the first requestor is not the victim at issue, the department must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the first requestor is the victim at issue, the submitted information may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with common law privacy. In that instance, we will consider your argument under section 552.108 of the Government Code for the submitted information. You also seek to withhold the entirety of the submitted information from the second requestor under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld from the second requestor on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the submitted information from the second requestor under section 552.101 of the Government Code on that basis.

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* 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the submitted information relates to a closed criminal investigation 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, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, if the first requestor is not the victim at issue, the department must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the first requestor is the victim at issue, then with the exception of the basic information, which must be released, the department may withhold the submitted information from the first requestor under section 552.108(a)(2) of the Government Code. In either case, with the exception of the basic information, which must be released, the department may withhold the submitted

information from the second requestor 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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/jm

Ref: ID# 929103

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)