



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 9, 2022

Ms. Jennifer Burnett  
Assistant General Counsel and Public Information Coordinator  
University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2903

OR2022-03636

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# 931692 (Reference No. 203740).

The University of Texas at Houston Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the doctrine of common law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *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 common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). 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 involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

The submitted report contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, the requestor knows the identity of the individual involved in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the individual's common law right of privacy. However, the requestor states he is the attorney of the individual whose privacy is at issue, and thus, the requestor may be acting as the individual's representative. As such the requestor may have a right of access to the named individual's private information pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the requestor is acting as the authorized representative of the named individual, then he has a right of access to the submitted information pursuant to section 552.023(a), and this information may not be withheld under section 552.101 in conjunction with common law privacy. In that instance, we will consider your remaining arguments against disclosure. However, if the requestor is not acting as the authorized representative of the named individual, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common law privacy.<sup>1</sup>

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). Generally, 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. See Open Records Decision No. 474 at 4-5 (1987). Where an agency 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 only if it provides this office with (1) a demonstration the information relates to the pending case, and (2) a representation from the law enforcement agency stating that it wishes to have the information withheld.

You state the Harris County District Attorney’s Office (the “district attorney’s office”) objects to the release of the information at issue because it relates to an ongoing criminal investigation or prosecution, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d

---

<sup>1</sup> In this instance, our ruling is dispositive, and we need not address the remaining argument against disclosure of the submitted information.

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, section 552.108(a)(1) 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 “front page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, if the requestor is acting as the authorized representative of the named individual, then, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

In summary, if the requestor is not acting as the authorized representative of the named individual, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common law privacy. If the requestor is acting as the authorized representative of the named individual, then, with the exception of basic information, which must be released to this requestor, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

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,

Jahnna Ward  
Assistant Attorney General  
Open Records Division

JW/be

Ref: ID# 931692

c: Requestor