



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2022

Mr. O. Charles Buenger
City Attorney for the City of Groesbeck
Buenger & Associates
3203 Robinson Drive
Waco, Texas 76706

OR2022-09981

Dear Mr. Buenger:

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# 940069.

The Groesbeck Police Department (the "department"), which you represent, received two requests from the same requestor for information pertaining to specified case numbers, including a specified address and two named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[[],]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The department seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents under section 552.108. However, we will address the department's arguments against disclosure of the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You argue the information at issue pertains to closed investigations that did not result in convictions or deferred adjudications. Upon review, we find the release of report numbers 20168 and 20170 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, section 552.108(a)(1) is applicable to the report numbers 20168 and 20170. However, we find the department has failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information. Therefore, the department may not withhold any portion of the remaining information under section 552.108(a)(2) of the Government Code.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold report numbers 20168 and 20170 under section 552.108(a)(2) of the Government Code.¹

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. Section 552.101 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 Foundation*. *Id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Austin May 22, 2015, pet. denied) (mem. op.). We note the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) (“a person or 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 a 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 individual requests information concerning herself). Upon review, we find some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, with the exception of the requestor’s information, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You seek to withhold the information at issue under section 552.101 of the Government Code in conjunction with chapter 56 of the Code of Criminal Procedure.² Article 56A.101 provides, “[a]s far as reasonably practical, the address of the victim may not be a part of the court file except as necessary to identify the place of the offense. The phone number of the victim may not be a part of the court file.” Crim. Proc. Code art. 56A.101. We note, however, the language of article 56A.101 simply limits the information to be placed in the court’s file. *See id.* The statute does not make information confidential or restrict access to the information in any location other than a court file. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality under statutory predecessor to section 552.101 required express language making certain information confidential or stating that information shall not be released to public). Therefore, you have not established, and it is not otherwise apparent to this office, article 56A.101 of the Code of Criminal Procedure makes any of the information you seek to withhold confidential. Therefore, we conclude the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with article 56A.101 of the Code of Criminal Procedure.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to their own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, the department must withhold the motor vehicle record information, which we marked, under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the department may withhold report numbers 20168 and 20170 under section 552.108(a)(2) of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under section

² Although the department raises former article 56.09 of the Code of Criminal Procedure, we note this article has been repealed. We understand the department to raise article 56A.101 instead.

552.130 of the Government Code. The department must release the remaining information.³

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,

Sarah E. Reese
Attorney
Open Records Division

SER/mo

Ref: ID# 940069

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the information being released contains social security numbers not belonging to the requestor. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). We also note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code §§ 552.0023(a), 560.002; ORD 481 at 4. Accordingly, if the department received another request for this information from a different requestor, the department must again seek a ruling from this office.