



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 24, 2022

Mr. Ryan Erickson  
Assistant District Attorney  
Brazoria County  
111 East Locust, Suite 408A  
Angleton, Texas 77515

OR2022-14954

Dear Mr. Erickson:

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# 949415 (Ref. No. 22-0574).

Brazoria County (the “county”) received a request for information pertaining to a specified investigation involving a named individual. You state the county will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you state release of some of the submitted information may implicate the interests of the Houston Police Department (the “department”). Accordingly, you state the county notified the department of the request for information and of its right to submit arguments to this office.<sup>1</sup> *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” *Id.* § 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). You state the submitted information pertains to an ongoing criminal investigation being conducted by the Brazoria County Sheriff’s Office. Based on your representations and our review, we conclude the release of

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<sup>1</sup> As of the date of this letter, we have not received comments from the department.

the information at issue 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 information at issue.

However, we note 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 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity of the complainant, but does not include the identities of any witnesses or victims who are not complainants. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, the county may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>2</sup> Gov't Code § 552.101. This section 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. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

We note portions of the basic information reveal the identity of a sexual assault victim. In this case, we note the identity of the victim, as well as some details of the alleged sexual assault, may be contained in documents that are a matter of public record and which are in the public domain. Thus, to the extent such information is in the public domain, we conclude the county may not withhold the identity of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broad. Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54.57 (Tex.

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<sup>2</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).

1992) (“Trial proceedings are public information . . . the law cannot recall information once it is in public domain.”). Upon review, we find the information we have marked and indicated satisfies the standard articulated in *Industrial Foundation*. Accordingly, the county must generally withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information we have marked and indicated is in the public domain, the county may not withhold it under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, with the exception of the basic information, which must generally be released, the county may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the county must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy; however, to the extent such information is in the public domain, the county may not withhold it under section 552.101 of the Government Code on this basis.

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/be

Ref: ID# 949415

Enc. Submitted documents

c: Requestor  
(w/o enclosures)