



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 15, 2022

Ms. Briana D. August  
Assistant University Counsel  
Southern Methodist University  
P.O. Box 750132  
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OR2022-39185

Dear Ms. August:

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# 990642.

The Southern Methodist University Police Department (the "department") received a request for all records relating to the requestor, including information pertaining to specified case and incident numbers. You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Section 51.212(f) of the Education Code reads as follows:

A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.

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<sup>1</sup> Although the department does not raise section 552.136 of the Government Code in its brief, we understand you to raise this exception based on the substance of your arguments and your markings.

Educ. Code § 51.212(f). We understand the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. You assert report numbers 150200 and 150434 do not relate solely to law enforcement activities. Rather, you claim this information is administrative in nature, and thus, is not subject to release under the Act pursuant to section 51.212(f). However, we find this information was created by the department for the purpose of law enforcement and you do not demonstrate it is related to any other non-law enforcement activity. Therefore, we find report numbers 150200 and 150434 relate solely to law enforcement activities for purposes of section 51.212(f) of the Education Code, and thus, are subject to the Act. Accordingly, this information must be released, unless it falls within an exception to public disclosure under the Act. *See Gov't Code* §§ 552.006, .021, .301, .302.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses the informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer’s identity. *See Open Records Decision No. 208* at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” *Open Records Decision No. 279* at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582* at 2 (1990), *515* at 4 (1988). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. *Open Records Decision No. 549* at 5 (1990).

You state the information you marked identifies a complainant who reported a violation of criminal law to the department. Upon review, we conclude you have demonstrated the applicability of the common-law informer’s privilege to some of the information at issue. Accordingly, with the exception of the information we marked for release, the department may withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.<sup>2</sup> However, we find you have failed to demonstrate the information we marked

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

for release consists of the identifying information of an individual who reported a criminal violation to the department for purposes of the informer's privilege. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception. For many years, this office determined section 552.101, in conjunction with the common-law right to privacy, protected information from disclosure when "special circumstances" exist in which the disclosure of information would place an individual in imminent danger of physical harm. *See, e.g.*, Open Records Decision Nos. 169 (1977) (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution), 123 (1976) (information protected by common-law right of privacy if disclosure presents tangible physical danger). However, the Texas Supreme Court has held freedom from physical harm does not fall under the common-law right to privacy. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, LP. & Hearst Newspapers, LLC*, 343 S.W.3d 112 (Tex. 2011) (holding "freedom from physical harm is an independent interest protected under law, untethered to the right of privacy"). Instead, in *Cox*, the court recognized, for the first time, a separate common-law physical safety exception to required disclosure that exists independent of the common-law right to privacy. *Id.* at 118. Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned that "vague assertions of risk will not carry the day." *Id.* at 119.

Upon review, we find release of some of the information issue, which we marked, would subject the individuals at issue to a substantial risk of physical harm. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.<sup>3</sup> However, upon review, we find you have failed to demonstrate release of any of the remaining information at issue would create a substantial threat of physical harm to an individual. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with the common-law physical safety exception.

Section 552.136 of the Government Code states "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). We understand the submitted student identification numbers can be used in transaction that involve the transfer of funds and information of value. Upon review, we find the student identification numbers at issue are access device numbers for purposes of this exception. However, the purpose of section 552.136 is to protect the privacy interests of individuals. Thus, the requestor has a right of access to his own access device number under section 552.023 of the Government Code and it may not be withheld from him under section 552.136. *See id.* § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are 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). Accordingly, with the exception of the student identification number belonging to the requestor, the department must withhold the student identification numbers you marked under section 552.136 of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code 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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied). (mem. op.). We note the requestor has a right of access to his own personal information and date of birth, and this information may not be withheld from him under common-law privacy. *See id.* § 552.023(a); ORD 481 at 4. We also note some of the individuals at issue have been de-identified pursuant to the informer’s privilege and the common-law physical safety exception. Therefore, the privacy interests in those individuals’ dates of birth are sufficiently protected, and the department may not withhold them under common-law privacy. Accordingly, with the exception of the requestor’s date of birth, the department must withhold the dates of birth of any remaining identifiable public citizen under section 552.101 of the Government Code in conjunction with common-law privacy.

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

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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. In this instance, we understand you seek to withhold the entirety of report number 130092 under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of report number 130092 must be withheld on the basis of common-law privacy. Therefore, the department may not withhold the entirety of report number 130092 under section 552.101 on that basis.

Section 552.130 of the Government Code exempts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See Gov't Code § 552.130.* We note, because section 552.130 protects privacy interests, the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code exempts from disclosure the social security number of a living person. *See Gov't Code § 552.147.* We note the requestor has a right of access to his social security number and it must be released to him. *See generally id.* § 552.023(a). Therefore, the department may not withhold the social security number at issue under section 552.147 of the Government Code.

In summary, with the exception of the information we marked for release, the department may withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. With the exception of the student identification number belonging to the requestor, the department must withhold the student identification numbers you marked under section 552.136 of the Government Code. With the exception of the requestor's date of birth, the department must withhold the dates of birth of any remaining identifiable public citizen under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information pertaining to the requestor, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor.<sup>5</sup>

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<sup>5</sup> We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See Gov't Code § 552.023(a); see also* ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/pt

Ref: ID# 990642

Enc. Submitted documents

c: Requestor  
(w/o enclosures)