



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2012

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-07241

Dear Ms. Chatterjee:

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# 454660 (OGC# 142569).

The University of Texas Southwestern Medical Center (the "university") received a request for the following information from a specified time period: (1) a list of the numbers of Part I crimes by category and year and (2) incident reports for all murders, rapes, robberies, and aggravated assaults. You inform us the university has released the information responsive to part one of the request and some of the information responsive to part 2 of the request. You state social security numbers either have been or will be redacted pursuant to section 552.147 of the Government Code.¹ You claim other responsive information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. You also inform us the City of Fort Worth (the "city") was notified of its right to submit comments to this office as why some of the information at issue should

¹Section 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 under the Act.

not be released. *See* Gov't Code § 552.304. We received comments from the city. We have considered all the submitted arguments and reviewed the information you submitted.

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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668,685 (Tex. 1976). Information that identifies or tends to identify a sexual assault victim is confidential under common-law privacy. *See id.* at 683; *see also* Open Records Decision Nos. 393 (1983), 339 (1982). We therefore agree the university must withhold the information you have marked that identifies the alleged sexual assault victim in case number 05-12-17-203442 under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.101 of the Government Code also encompasses information other statutes make confidential. The university claims section 552.101 in conjunction with section 58.005 of the Family Code, which provides that “[r]ecords and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals].” Fam. Code § 58.005(a). You have marked information related to complaint number 2009-000732 you contend is confidential under section 58.005. You do not inform us, however, nor does the information at issue reflect that it was “obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court.” *Id.* We therefore conclude the university may not withhold the information at issue under section 552.101 of the Government Code on the basis of section 58.005 of the Family Code.

The city claims section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records related to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c), which provides as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

²As we are able to make this determination, we need not address your other claim for the marked information under section 552.101.

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c); *see id.* §. 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code ch. 58). For purposes of section 58.007(c), a “child” is a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A) (defining “child” for purposes of Fam. Code ch. 58). Although the city contends information related to complaint number 2009-000732 involves juvenile offenders, so as to be confidential under section 58.007(c), we find the offenders involved were 17 years of age at the time of their offenses. We therefore conclude the university may not withhold any of the information related to complaint number 2009-000732 under section 552.101 of the Government Code on the basis of section 58.007(c) of the Family Code.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(b)(2) excepts “[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(b)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information the university seeks to withhold under section 552.108(a)(2) and (b)(2). You indicate, and have provided a letter from the university’s chief of police confirming, the marked information is related to concluded investigations that did not result in a conviction or a deferred adjudication. Based on your representations and our review, we conclude the

university may withhold the marked information under section 552.108(a)(2) of the Government Code.³

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1)-(2). You indicate the university will redact the driver's license and motor vehicle information related to complaint number 2009-000732 you have marked pursuant to section 552.130(c) and the previous determination issued under section 552.130(a)(2) in Open Records Decision No. 684 (2009).⁴ We agree the university must withhold that information under section 552.130 of the Government Code. We also conclude the university must withhold the other motor vehicle information you have marked and the additional motor vehicle information we have marked related to complaint number 2009-000732 under section 552.130.

In summary, the university (1) must withhold the information you have marked in case number 05-12-17-203442 under section 552.101 of the Government Code in conjunction with common-law privacy; (2) may withhold the information you have marked under section 552.108(a)(2) of the Government Code; and (3) must withhold the driver's license and motor vehicle information you have marked and the additional motor vehicle information we have marked related to complaint number 2009-000732 under section 552.130 of the Government Code. The rest of the submitted information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

³As we are able to make this determination, we need not address your other claims for the marked information.

⁴Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the driver's license and personal identification information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without requesting a decision, including a Texas license plate number under section 552.130.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Sean Opperman". The signature is written in a cursive, flowing style.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/bhf

Ref: ID# 454660

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102
(w/o enclosures)