



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2012

Mr. Damon C. Derrick  
General Counsel  
Stephen F. Austin State University  
P.O. Box 13065  
Nacogdoches, Texas 75962-3065

OR2012-16606

Dear Mr. Derrick:

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# 468224.

The Stephen F. Austin University Police Department (the "department") received a request for information related to a specified type of offense. You state you have no information responsive to the portion of the request seeking audio or video recordings of victims in which "the alleged offense has been determined to be false."<sup>1</sup> You also state the department has released some responsive information to the requestor. You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 that the requested information relates to a criminal

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

investigation that has concluded in a final result other than a conviction or deferred adjudication. You have marked the information that the department seeks to withhold under section 552.108(a)(2). You inform us the submitted information pertains to a criminal investigation that concluded in the grand jury issuing a no bill of indictment. Therefore, this investigation has concluded in a result other than conviction or deferred adjudication. Based on your representation, we conclude that the department may withhold the marked information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

You seek to withhold portions of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information you have marked is not highly intimate or embarrassing information of no legitimate public concern. Accordingly, it may not be withheld on that basis.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit, title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130. Accordingly, the department must withhold the driver’s license information we have marked under section 552.130 of the Government Code.

In summary, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

with common-law privacy, as well as the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</sup>

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



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 468224

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the remaining information contains a social security number. 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).