



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2013

Ms. Zeena Angadicheril  
Office of General Counsel  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2013-13226

Dear Ms. Angadicheril:

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# 495185 (OGC# 150073).

The University of Texas at Dallas (the "university") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

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[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain, and provided a letter from the university's police department (the "department") stating, the information at issue pertains to an active investigation by the department. You state the department is a law

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

enforcement agency established pursuant to section 51.203 of the Education Code. You further state the release of the information at issue would interfere with the department's ability to investigate and prosecute criminal activity. Based on your representations and our review, we conclude the release of most of 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, we note the information at issue includes a citation, which we have marked. Because a copy of the citation was provided to the individual who was cited, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). We therefore conclude the citation may not be withheld under section 552.108(a)(1).

We also note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127. We note basic information includes a detailed description of the offense, but does not include the home address or telephone number of the complainant, unless the address is the location of the crime, premises involved, or place of arrest. *See* ORD 127. Thus, with the exception of basic information and the citation, the university may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

You raise section 552.101 of the Government Code in conjunction with common-law and constitutional privacy for the basic information and citation. 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 encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information that (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 satisfied. *Id.* at 681-82. The type of information considered 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. In addition, this office has concluded information that either identifies or tends to identify a victim of sexual assault or other

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

sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORDs 393,339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld).

You argue the information at issue concerns an investigation of an alleged sexual assault and should be withheld in its entirety because the requestor knows the victim's identity. In this instance, however, the information at issue pertains to an assault by contact. Furthermore, you have failed to explain how the remaining information at issue is highly intimate or embarrassing information of no legitimate public interest. Thus, the university may not withhold any of the basic information or the citation under section 552.101 in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985)). Upon review, we find you have failed to demonstrate how any of the remaining information at issue falls within the constitutional zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Thus, no portion of the information at issue may be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, with the exception of basic information and the citation, the university may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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.texasattorneygeneral.gov/open/>

[orl\\_ruling\\_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 495185

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)