



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2013

Ms. Ana Vieira
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2013-21277

Dear Ms. Vieira:

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# 507928 (OGC# 152011).

The University of Texas at Arlington (the "university") received a request for reports made to the university's police department (the "department") regarding alleged sexual assaults for a specified time period and four categories of information pertaining to a named individual. You state the university is releasing some information to the requestor. You state you will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You also state you will redact motor vehicle record information pursuant to section 552.130 of the Government Code.² You claim

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it pertains to information that was created after the date of the request. This ruling does not address the public availability of any information that is not responsive to the request and the university is not required to release such information in response to this request.

Next, we note some of the submitted information, which we have marked, was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-20226 (2013), 2013-20633 (2013), 2013-21076 (2013), and 2013-21249 (2013). In Open Records Letter Nos. 2013-20226 and 2013-20633, we determined the university may withhold some information in case number 2013-01139 under section 552.108(a)(1) of the Government Code, but must release the remaining information at issue. In Open Records Letter No. 2013-21249, we determined, with the exception of basic information, the university may withhold report number 2013-01162 from disclosure under section 552.108(a)(1) of the Government Code. However, the requestor in the instant request knows the identity of the alleged victim in case numbers 2013-01139 and 2013-01162. Therefore, the circumstances on which Open Records Letters Nos. 2013-20226 and 2013-21249 were based have changed, and the university may not rely on those rulings as previous determinations for case numbers 2013-01139 and 2013-01162. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). In Open Records Letter No. 2013-21076, we determined the university (1) may withhold the information you marked under section 552.107(1); (2) may withhold the information we marked under section 552.111; (3) must withhold the information we marked under section 552.117(a)(1) of the Government Code if the individuals whose information was at issue timely elected to keep their personal information confidential pursuant to section 552.024 of the Government Code and the cellular telephone services were not paid for by a governmental body; and (4) must release the remaining information. In Open Records Letter No. 2013-20633, we also determined the university must withhold the information we marked under section 552.130 of the Government Code and may withhold some information in case number 2013-01183 under section 552.108(a)(1), but must release the remaining information at issue. As we

³We 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 that those records contain substantially different types of information than that submitted to this office.

have no indication the law, facts, or circumstances on which Open Records Letter No. 2013-21076 and the ruling on case number 2013-01183 in Open Records Letter No. 2013-20633 were based have changed, we conclude the university may continue to rely on Open Record Letter No. 2013-21076 and the ruling in Open Records Letter No. 2013-20633 on case number 2013-01183 as previous determinations and withhold or release the marked information in accordance with those rulings. *See* ORD 673. However, we will address your arguments for the information not subject to Open Records Letter Nos. 2013-20226, 2013-20633, 2013- 21076, and 2013-21249.

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(a)(1) must reasonably 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 explain, and have provided a letter from the department stating, the information at issue pertains to active criminal investigations by the department. You state the department is a law 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, we conclude the release 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 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, and you acknowledge, 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; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note the marked information does not include basic information.⁴ Therefore, you may withhold the information you marked under section 552.108(a)(1).

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 section encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

Report numbers 2013-01139 and 2013-01162 pertain to an alleged sexual assault. In Open Records Decision No. 393 (1983), this office concluded, generally, only information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 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). The requestor in this case knows the identity of the alleged victim. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We conclude, therefore, the university must withhold report numbers 2013-01139 and 2013-01162 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy.⁵

In summary, the university may continue to rely on Open Record Letter No. 2013-21076 and the ruling in Open Records Letter No. 2013-20633 on case number 2013-01183 as previous determinations and withhold or release the marked information in accordance with those rulings. You may withhold the information you marked under section 552.108(a)(1) of the Government Code. The university must withhold report numbers 2013-01139 and 2013-01162 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining 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.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

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

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 black ink that reads "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 507928

Enc. Submitted documents

c: Requestor
(w/o enclosures)