



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2014

Ms. Doris Preusse
Senior Records Clerk
Central Records
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2014-02646

Dear Ms. Preusse:

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# 513975 (Pflugerville Reference No. W000843-112213).

The Pflugerville Police Department (the "department") received a request for any documents related to any investigations that have taken place at the Pflugerville Care Center. You state you have released some information to the requestor. 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.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that 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 (1983); *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). Some of the submitted reports pertain to alleged sexual assaults, and the requestor in this case knows the identities of the alleged victims. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victims' common law right to privacy. We conclude, therefore, the department must withhold report numbers 10120148 and 11060448 in their entireties pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.¹

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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 13080353 relates to “an ongoing investigation pending court.” *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). Based on this representation and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to report number 13080353.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. 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 186-8. We note basic information includes a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public *Houston Chronicle*). Thus, with the exception of basic information, which you state you have released, the department may withhold report number 13080353 under section 552.108(a)(1) of the Government Code.²

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

We note portions of the remaining information are protected under common-law privacy. As noted above section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Indus. Found.*, 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, we note because the common-law right to privacy is a personal right that lapses at death, common-law privacy does not protect information that relates only to a deceased individual. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917; Open Records Decision No. 272 at 1 (1981). Upon review, we find the information we have marked in the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked in the remaining information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release.³ Gov't Code § 552.130(a)(1). Upon review, we find the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.⁴

In summary, the department must withhold report numbers 10120148 and 11060448 and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold report number 13080353 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

section 552.130 of the Government Code. The department must release the remaining information.⁵

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 513975

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the information to be released contains social security numbers. 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 an attorney general decision under the Act. See Gov't Code § 552.147(b).