



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2014

Ms. Audra Gonzalez Welter
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-07616

Dear Ms. Welter:

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# 521908 (OGC # 154699).

The University of Texas at San Antonio (the "university") received a request for information pertaining to a specified incident and named individuals. You state the university released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 release of the information at issue 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 a portion of the submitted information, which you have marked, relates to a pending criminal investigation being conducted by the university's police department (the

¹Although you do not raise section 552.117 of the Government Code in your brief to our office, we understand you to raise this exception based on your markings.

“department”) and a prosecution that is pending before the City of San Antonio Municipal Court. You inform us the department objects to the release of this information because its release would interfere with the pending investigation and prosecution. Based on these representations, we conclude section 552.108(a)(1) is applicable in this instance. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, 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; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state has been released, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

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 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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information you marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the university may not withhold any of the remaining information at issue 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. ORD 455 at 4. The first type of constitutional privacy 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 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 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate how any of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the university may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the university may not withhold this information under section 552.117(a)(1) if the individuals whose information is at issue did not make a timely election to keep the information confidential. Further, we find the remaining information you have marked is not subject to section 552.117(a)(1) of the Government Code and may not be withheld on that basis.

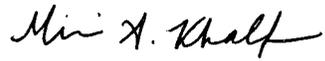
In summary, with the exception of basic information, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must also withhold the information we have marked under section 552.117(a)(1) of the Government Code, if the individuals whose information is at issue timely requested confidentiality. The university must release the remaining information.

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 "Miriam A. Khalifa".

Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 521908

Enc. Submitted documents

c: Requestor
(w/o enclosures)