



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2016

Mr. George Haratsis
Counsel for the Texan Christian University Police Department
McDonald Sanders P.C.
777 Main Street, Suite 1300
Fort Worth, Texas 76102

OR2016-06035

Dear Mr. Haratsis:

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# 603639.

The Texas Christian University Police Department (the "department"), which you represent, received a request for all police reports related to rape, sexual assault, sexual violence, or sexual abuse since August 1, 2010. The department claims the submitted information is either not subject to the Act or excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, we note the requestor excluded from her request "all victims' names, as well as other identifying information like addresses and student identification numbers[.]" Thus, these types of information within the submitted documents are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information

¹We 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.

in response to this request.² *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

Next, the department asserts the submitted responsive information is not subject to the Act. The 84th Legislature added section 51.212(f) of the Education Code, which reads, “A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.” Educ. Code § 51.212(f). The department inform us it is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, the department acknowledges it is a governmental body for purposes of the Act, and information it maintains is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. The department states it maintains the submitted information. However, it argues section 51.212(f) only applies to “incidents and law enforcement activities and related records occurring after [section 51.212(f)]’s effective date.” The department asserts, pursuant to section 311.022 of the Government Code a statute is presumed to be prospective in its operation unless expressly made retrospective. Gov’t Code § 311.022. Section 51.212(f) of the Education Code went into effect on September 1, 2015. The department received the request on January 8, 2016, and sought a ruling from our office on January 22, 2016. Upon review, we find the submitted information consists of records maintained by the department on or after the effective date of section 51.212(f). Thus, applying section 51.212(f) to the submitted information is a prospective application of the statute. Accordingly, pursuant to section 51.212(f), the submitted information is subject to the Act to the extent such information relates solely to law enforcement activities, and the department must release it, unless the department demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302. The department acknowledges the responsive information relates solely to law enforcement activities. Accordingly, we will address the claimed exceptions against its disclosure.

The department asserts the submitted responsive information is excepted from disclosure under section 552.108 of the Government Code. 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: (1) 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 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, 710 (Tex. 1977). The department states Exhibit 2 relates to a pending criminal investigation. Based on this representation, we conclude the release of this information 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, 186-87

²As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

(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). Therefore, we agree section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) 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 the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department asserts Exhibit 3 pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic 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 considered to be basic information). We note basic information includes, among other things, a detailed description of the offense, and the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. The department seeks to withhold the narrative portions of the submitted reports under section 552.108. The remaining portions of the reports do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. Accordingly, we determine the department must release a sufficient portion of the narrative of each of the submitted reports to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Therefore, with the exception of the responsive basic information, the department may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code and Exhibit 3 under section 552.108(a)(2) of the Government Code.³

The department asserts some of the basic information is excepted from disclosure under section 552.101 of the Government Code, which 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 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

³As our ruling is dispositive, we do not address the department's other arguments to withhold the submitted information, except to note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code.

683. This office has also concluded information that identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983). Nevertheless, as discussed above, the identifying information of the victims of sexual assault in the submitted reports, including their names and addresses, is not responsive to the request for information. We also find none of the remaining basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the responsive basic information in the submitted documents is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

To conclude, with the exception of the responsive basic information, which the department must release, the department may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code and Exhibit 3 under section 552.108(a)(2) 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 603639

Enc. Submitted documents

c: Requestor
(w/o enclosures)