



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

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OR2016-06065

Dear Ms. Mebane and Ms. Honey:

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# 601630 (Ref. Nos. W048146, W048381).

The City of Fort Worth and the Fort Worth Police Department (collectively, the "city") received two requests from different requestors for a specified incident report. 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 demonstrated. *See id.* at 681-82.

The submitted information pertains to a report of alleged sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally, only information that 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. ORD 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).

In this case, the first requestor knows the identity of the alleged victim. We believe in this instance, withholding only identifying information from the first requestor would not preserve the victim's common-law right to privacy. Therefore, we conclude the city must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.¹ However, we have no indication the second requestor knows the identity of the victim. Therefore, the city may not withhold the entirety of the submitted information from the second requestor on this basis. Accordingly, we will address your remaining argument against disclosure of the submitted information to the second requestor.

Section 552.108(a) 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). Generally, 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 state the submitted information relates to a pending criminal investigation and prosecution, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the submitted 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 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ*

¹As we are able to make this determination, we need not address your remaining arguments against disclosure of the submitted information to the first requestor.

ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant and a detailed description of the offense but does not include dates of birth. See ORD 127 at 3-4. Accordingly, with the exception of basic information, which must be released, the city may generally withhold the submitted information from the second requestor under section 552.108(a)(1) of the Government Code.²

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy, which is subject to the two-part test above. *Indus. Found.*, 540 S.W.2d at 685. 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, this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* ORD 339; *see also Morales*, 840 S.W.2d at 519. In this instance, the basic information uses a pseudonym for the alleged victim of sexual assault. We find the use of a pseudonym sufficiently protects this victim’s identity. Furthermore, we find none of the remaining basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the basic information may be withheld from the second requestor under section 552.101 in conjunction with common-law privacy.

In this instance, we note the second requestor is with the Tarrant County College District Police Department (the “department”) and may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any criminal history record information (“CHRI”) maintained by [DPS] about a person.” See Gov’t Code § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

²As we are able to make this determination, we need not address your remaining argument against disclosure of this information to the second requestor.

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Code Crim. Proc. art. 60.01(1).

Although it appears the department is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the second requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the city determines the second requestor intends to use the CHRI for a criminal justice purpose, we conclude the city must make available to the second requestor the CHRI from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information, which must be released, the city may withhold the remaining information from the second requestor under section 552.108(a)(1) of the Government Code. However, if the city determines the second requestor does not intend to use the CHRI for a criminal justice purpose, then the second requestor does not have a right of access to the submitted CHRI pursuant to chapter 411. In that instance, with the exception of basic information, which must be released, the city may withhold the submitted information from the second requestor under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code. If the city determines the second requestor intends to use the CHRI for a criminal justice purpose, the city must make available to the second requestor the CHRI from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions and, with the exception of basic information, which must be released, may withhold the remaining information from the second requestor under section 552.108(a)(1) of the Government Code. If the city determines the second requestor does not intend to use the CHRI for a criminal justice purpose, then with the exception of basic information, which must be released, the city may withhold the submitted information from the second requestor 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,


Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 601630

Enc. Submitted documents

c: Requestor
(w/o enclosures)