



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2016

Ms. Michelle Buendia
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2016-06785

Dear Ms. Buendia:

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# 602868 (ORR# 2016-00071).

The Dallas Police Department (the "department") received a request for certain categories of information pertaining to investigations by the department's Public Integrity Unit (the "PIU") during calendar year 2015. The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the requestor only seeks the following information regarding investigations by the PIU during the specified time period: 1) the location of the crime, 2) a detailed description of the offense, 3) the identification and description of the complainant, 4) the premises involved, 5) the time of occurrence of the crime, 6) the property involved, and 7) the names of the investigating officers. Accordingly, any other information is not responsive to the request for information. This ruling does not address the public availability of non-responsive information, and the department need not release non-responsive information to the requestor.

Next, we note the department has not submitted information responsive to each item listed above for the investigations at issue. Further, we note the request is for information pertaining to investigations initiated during calendar year 2015. You have submitted records reflecting investigations only for July through November of 2015. To the extent the department maintained additional responsive information when it received the request for information, we assume it has been released. If the department has not released such information, it must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108 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). 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 “front-page” information held to be public in *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). *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the location of the crime, a detailed description of the offense, the identification and description of the complainant, the premises involved, the time of occurrence of the crime, the property involved, and the names of the investigating officers. *See id.* Basic information must be released, even if it does not literally appear on the front page of a police report. Therefore, because the requestor only seeks basic information regarding the investigations at issue, the department may not withhold any of the responsive information 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. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The department asserts some of the submitted information pertains to an incident involving prostitution of a child, and thus, is confidential under section 261.201. *See id.* § 261.001(1)(G) (definition of child abuse includes compelling prostitution under Penal Code § 43.05(a)(2)); *see also* Penal Code § 43.05(a)(2), (b) (providing it is second degree felony to cause by any means child younger than 18 years to commit prostitution). Upon review, we agree the information at issue was used or developed in an investigation under chapter 261. Accordingly, we conclude the department must withhold the responsive information it has marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also 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 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* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 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). We note the submitted information does not contain the identity of a victim of sexual assault or other sex-related offense. Upon review, we find none of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, we conclude the submitted information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

To summarize, the department must withhold the responsive information it has marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining responsive information must be released to the requestor.

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/akg

Ref: ID# 602868

Enc. Submitted documents

c: Requestor
(w/o enclosures)