



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2016

Ms. Vanessa A. Gonzalez
Counsel for Baylor University
Bickerstaff Heath Delgado Acosta LLP
Building One, Suite 300
3711 South MoPac Expressway
Austin, Texas 78746

OR2016-18465

Dear Ms. Vanessa A. Gonzalez:

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# 622675.

The Baylor University Police Department (the "department") received a request for all records involving a named individual during a specified time period. You state the department has released some information to the requestor. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-10123 (2016). In that ruling, we determined the information at issue is not subject to disclosure under section 51.212(f) of the Education Code, and the department need not release it to the requestor. We understand the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the department must continue to rely on Open Records Letter No. 2016-10123 as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental

body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider whether any information not subject to the previous ruling is excepted from disclosure.

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 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. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Upon review, we find the present request requires the department to compile unspecified law enforcement records concerning the named individual. Accordingly, we find the request implicates the named individual’s right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must continue to rely on Open Records Letter No. 2016-10123 as a previous determination and withhold the information at issue in accordance with that ruling. To the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

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 black ink, appearing to read "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 622675

Enc. Submitted documents

c: Requestor
(w/o enclosures)