



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2016

Mr. Laurence E. Boyd
Counsel for the City of Danbury
Laurence E. Boyd, Attorney at Law
P.O. Box 269
Angleton, Texas 77516-0269

OR2016-24136

Dear Mr. Boyd:

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# 632405.

The City of Danbury (the "city"), which you represent, received a request for a police report pertaining to a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide a statement from the Brazoria County District Attorney's Office stating, the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude the release of the information you marked 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 ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus,

section 552.108(a)(1) is applicable to the information you marked. Therefore, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code.

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 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, in Open Records Decision No. 393 (1983), this office concluded that 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 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 embarrassing information and public did not have a legitimate interest in such information).

In this instance, the city seeks to withhold portions of the submitted information under section 552.101 in conjunction with common-law privacy. Upon review, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the remaining information you have marked relates to an individual who has been de-identified and whose privacy interests are, thus, protected, or you have not demonstrated the information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

In summary, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city 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.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 "Emily Kunst". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 632405

Enc. Submitted documents

c: Requestor
(w/o enclosures)