



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 11, 2012

Ms. Linda Hight  
Records Coordinator  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033

OR2012-00564

Dear Ms. Hight:

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# 441936.

The City of Cleburne (the "city") received a request for information related to an investigation involving a named individual. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you submitted.

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 exception encompasses information other statutes make confidential. Section 21.12 of the Penal Code provides in part:

(a) An employee of a public or private primary or secondary school commits an offense if the employee:

(1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private secondary school at which the employee works;

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<sup>1</sup>Although you do not specifically raise section 552.130 of the Government Code, you have highlighted information the city seeks to withhold under that exception. Accordingly, we will address section 552.130, which is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(2) holds a certificate or permit issued as provided by Subchapter B, Chapter 21, Education Code, or is a person who is required to be licensed by a state agency as provided by section 21.003(b), Education Code, and engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:

(A) enrolled in a public primary or secondary school in the same school district as the school at which the employee works; or

(B) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if:

(i) students enrolled in a public or private primary or secondary school are the primary participants in the activity; and

(ii) the employee provides education services to those participants[.]

...

(d) The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under [the Act].

Penal Code § 21.12(a), (d). We note the submitted police report is related to an investigation of an alleged improper relationship between an educator and a student. *See id.* § 21.12(a). You seek to withhold information related to the individual identified as the victim under section 21.12(d). The term “secondary school” is not defined for purposes of section 21.12. Undefined terms are typically given their ordinary meaning. *See Gov’t Code* § 311.011(a); *Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937, 939 (Tex. 1993). The ordinary meaning of the term “secondary school” is “a school intermediate between elementary school and college and usually offering general, technical, vocational, or college-preparatory courses.” WEBSTER’S NEW COLLEGIATE DICTIONARY 1055 (10th ed. 1994); *cf.* 40 TAC § 811.2(13) (defining “secondary school” for purposes of Texas Workforce Commission rules as “[e]ducational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a General Educational Development (GED) credential”). The submitted report reflects the victim was enrolled in a GED program affiliated with the Cleburne Independent School District (the “district”) and allegedly had a sexual relationship with the suspect, an educator employed by the district. We note the report also identifies a second individual enrolled in the same program who allegedly had a sexual relationship with the suspect. On review, we find both of the individuals concerned were enrolled in a public secondary school for purposes of

section 21.12 at the time of their alleged relationships with the suspect. We therefore conclude the city must withhold the names of both individuals, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code. Although you seek to withhold additional information on this basis, we note the language of a statutory confidentiality provision such as section 21.12(d) of the Penal Code controls the scope of the statute's protection. *See* Open Records Decision No. 649 at 3 (1996). We therefore conclude the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of section 21.12(d).

You also generally contend information related to the individual identified as the victim is confidential under section 552.101 of the Government Code. This exception also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We note the submitted information is related to a criminal investigation. The public has a legitimate interest in knowing the general details of a crime. *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5<sup>th</sup> Cir. 1994)); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (public has legitimate interest in details of crime and police efforts to combat crime in community). We therefore conclude the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 . . . release of the information would interfere with the detection, investigation or prosecution of crime[.] Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim section 552.108(a)(1) for information regarding the suspect, which you have highlighted. You state the highlighted information regarding the suspect is related to an ongoing investigation. Based on your representation, we conclude the city may withhold the highlighted information regarding the suspect under section 552.108(a)(1) of the Government Code. *See Houston Chronicle*, 531 S.W.2d at 186-88 (court delineates law enforcement interests present in active cases).

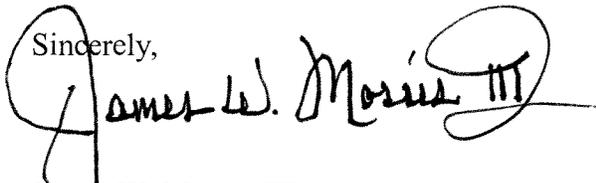
Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country or an identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document. *See* Gov't Code § 552.130(a)(1), (3). The city must withhold the driver's license and personal identification numbers we have marked under section 552.130 of the Government Code.

In summary, the city (1) must withhold the victims' names we have marked under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code; (2) may withhold the information regarding the suspect you have highlighted under section 552.108(a)(1) of the Government Code and (3) must withhold the driver's license and personal identification numbers we have marked under section 552.130 of the Government Code.<sup>2</sup> The rest of the submitted information must be released.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 441936

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the submitted information also contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.