



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2015

Mr. Vance Hinds
Assistant Ellis County & District Attorney
Ellis County & District Attorney
109 S. Jackson
Waxahachie, Texas 75165

OR2015-04540

Dear Mr. Hinds:

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# 555953.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for information related to a specific incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information contains a court-filed document that is subject to section 552.022(a)(17) of the Government Code, which provides the following:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Although you assert the information subject to section 552.022, which we have marked, is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff's office may not withhold the information subject to section 552.022 under section 552.108. You also assert this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. We note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As such, you may not withhold the information that is subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. Thus, the sheriff's office must release this information to the requestor. Additionally, we will address your remaining arguments for the information that is not subject to section 552.022.

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 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 pertains to a pending criminal investigation and prosecution. Based on this representation, we conclude the release of the remaining 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 ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108 (a)(1) is applicable to the remaining information.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, a detailed description of the offense and the identity of the complainant. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

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

You assert the basic information is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 met. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 (1983), 339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

Upon review, we find you have not demonstrated, nor does it otherwise appear, the requestor knows the identity of the alleged victim at issue. Thus, this is not a situation in which the basic information must be withheld in its entirety on the basis of common-law privacy. Further, we note, because the submitted report relates to an alleged sexual offense, the sheriff’s office is generally required to withhold the identity of the complainant from the basic information if the complainant is also the victim under section 552.101 of the Government Code in conjunction with common-law privacy. *See Indus. Found.*, 540 S.W.2d at 685; ORD 393. However, the complainant at issue, who is also the alleged victim, is identified only by a pseudonym. The use of a pseudonym sufficiently protects this complainant’s identity within the information at issue. Additionally, we find you have failed to demonstrate any of the basic information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the sheriff’s office may not withhold the information at issue under section 552.101 in conjunction with common-law privacy.

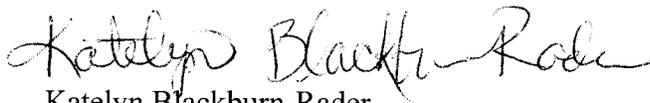
Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov’t Code § 552.147. Upon review, we find the sheriff’s office may withhold the social security number of the arrestee in the basic information under section 552.147 of the Government Code.

In summary, with the exception of basic information and the court-filed document, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. The sheriff's office may withhold the social security number of the arrestee in the basic information under section 552.147(a) 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 555953

Enc. Submitted documents

c: Requestor
(w/o enclosures)