



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2015

Ms. Sarah R. Martin
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2015-05274

Dear Ms. Martin:

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# 557008 (Reference No. 18518).

The Arlington Police Department (the "department") received a request for police reports from a specified time period involving specified offenses and a specified location.¹ You indicate you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹We understand the department sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 information in Exhibit B relates to a pending investigation. However, we note the report at issue in Exhibit B pertains to a Class C misdemeanor that occurred on April 4, 2010. The statute of limitations for a Class C misdemeanor is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02(b) (indictment or information on Class C misdemeanor may be presented within two years from date of commission of offense, and not afterward); *see also* Penal Code § 22.01(b)-(c) (assault under section 22.01 of the Penal Code is Class A, B, or C misdemeanor, or felony). More than two years have elapsed since the events giving rise to the report at issue. You have not informed this office any criminal charges were filed within the limitations period. Thus, we find you have not demonstrated release of the report at issue in Exhibit B would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold Exhibit B under section 552.108(a)(1) of the Government Code. *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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 information protected by other statutes, such as section 261.201 of the Family Code, which provides, in pertinent part:

(a) [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). You state the information in Exhibit C and Exhibit D includes child abuse offenses. Upon review, we find the information at issue was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). You do not indicate the department has adopted

a rule governing the release of this type of information; therefore, we assume no such regulation exists. Thus, we find the information at issue is confidential pursuant to section 261.201(a) of the Family Code. Accordingly, the department must withhold Exhibit C and Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law 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 satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The information in Exhibit E pertains to a sex-related offense. In this instance, you seek to withhold Exhibit E in its entirety under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis. Upon review, however, we find the identifying information of the victim of the sex-related offense, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

excepted from public release.³ See Gov't Code § 552.130. Thus, the department must withhold the motor vehicle record information we have marked in Exhibit B under section 552.130 of the Government Code.

In summary, the department must withhold Exhibit C and Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked in Exhibit B under section 552.130 of the Government Code. The remaining information in Exhibit B and Exhibit E 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.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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 557008

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).