



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2015

Ms. Susan V. Case
Administrative Assistant
Records Supervisor
City of Gainesville
Gainesville Police Department
201 Sante Fe Street
Gainesville, Texas 76240

OR2015-06337

Dear Ms. Case:

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# 558668.

The Gainesville Police Department (the "department") received a request for five categories of information regarding any incident in which a law enforcement officer employed by the department discharged a firearm resulting in injury or death of a person during a specified time period. You state the department released basic information. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). 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)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve

the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); see also Open Records Decision No. 350 at 3-4 (1982). You state the submitted information relates to a concluded criminal investigation that did not result in conviction or deferred adjudication. We note, however, Exhibit F consists of an internal affairs investigation conducted by the department. You do not provide any arguments explaining how the internal affairs investigation resulted in a criminal investigation or prosecution. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) to Exhibit F, and the department may not withhold this information on that basis. However, based on your representation and our review, we find section 552.108(a)(2) of the Government Code is applicable to the remaining information. Accordingly, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.¹

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). However, we note the public has a legitimate interest in knowing the details of a crime. See *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 (1994))). Further, we note the common-law right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find none of the information in Exhibit F is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department

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

may not withhold any of the information in Exhibit F under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12. If the individual is currently a licensed peace officer as defined by article 2.12, then the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, if the individual is no longer a licensed police officer as defined by article 2.12, the information we have marked may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual at issue is not currently a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department may only withhold the information at issue under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individual made a timely election under section 552.024, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the individual at issue did not make a timely election under section 552.024, his information may not be withheld under section 552.117(a)(1) of the Government Code.

In summary, with the exception of Exhibit F, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. If the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, then the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual whose information is at issue is not currently a licensed peace officer, then to the extent the individual made a timely election under section 552.024, the department must withhold the information we have marked under

²The 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).

section 552.117(a)(1) of the Government Code. The remaining 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.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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 558668

Enc. Submitted documents

c: Requestor
(w/o enclosures)