



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2015

Ms. Amanda Pell
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2015-06569

Dear Ms. Pell:

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# 558990 (PIR# 3926).

The Baytown Police Department (the "department") received a request for a specified police report. The department claims portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.152 of the Government Code. We have considered the exceptions the department claims 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 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). The department states the information it has marked relates to an ongoing criminal prosecution and release of the information would interfere with that prosecution. *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). Based on these representations and our

review, we conclude the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code.¹

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which makes juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, confidential under section 58.007(c). Section 58.007 provides, in pertinent part, as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). The department asserts the information it has marked is confidential under section 58.007(c). However, the department has failed to demonstrate how this information involves a child as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Therefore, the department may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also 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

¹As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of this information.

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 information that identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find the remaining information at issue, which we have marked for release, is either not highly intimate and embarrassing or is of legitimate public interest. Accordingly, except for the information we have marked for release, the department must withhold the information it has marked, and the additional information we have marked, 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 excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. The department informs us the information it has marked relates to undercover police officers. The department states release of this information would subject these officers to a substantial threat of physical harm. Based on the department's representations and our review, we find the department has demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the department must withhold the information it has marked under section 552.152 of the Government Code.

In summary, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code. Except for the information we have marked for release, the department must withhold the information it has marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code. The department

must withhold the information it has marked under section 552.152 of the Government Code. The department 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.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 558990

Enc. Submitted documents

c: Requestor
(w/o enclosures)