



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 21, 2015

Mr. James C. Tidwell  
Counsel for the City of Howe Police Department  
Wolfe, Tidwell & McCoy, LLP  
320 North Travis Street, Suite 205  
Sherman, Texas 75090

OR2015-14831

Dear Mr. Tidwell:

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# 572384.

The Howe Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You state the department has released some of the requested information. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

We first address your claim under section 552.108 of the Government Code, as it is potentially the most encompassing. 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

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<sup>1</sup>Although we understand you to also raise section 552.101 in conjunction with the common-law informer's privilege, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302.

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 you have marked relates to a pending criminal investigation. Based upon this representation and our review, we find release of the information at issue 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) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on your representation and our review, we find the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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 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. However, we note dates of birth of members of the public are not highly intimate or embarrassing information of no public interest. *See Open Records Decision No. 455 at 7 (1987)* (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the department may withhold the information it has marked under section 552.108(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](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

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<sup>2</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Luttrall".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/cbz

Ref: ID# 572384

Enc. Submitted documents

c: Requestor  
(w/o enclosures)