



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2015

Ms. Julie P. Doshier
Counsel for the City of Lancaster
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard
Dallas, Texas 75201

OR2015-16225

Dear Ms. Doshier:

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# 580474 (ORR# 72551).

The Lancaster Police Department (the "department") received a request for information pertaining to a specified incident. You state the department will release some of the requested information, including the police officer's crash report pursuant to section 550.065 of the Transportation Code. *See* Act of June 1, 2015, 84th Leg., R.S., H.B. 2633, § 1 (to be codified at Transp. Code § 550.065(c)) (providing for release of accident report to person or entity listed under this subsection). You claim some of 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 552.101 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. This section 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. We note dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth

not protected under privacy). You also assert the marked date of birth of a member of the public is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy on the basis of the decision in *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. filed) (mem. op.). However, a petition for review was filed with the Texas Supreme Court on July 29, 2015. Accordingly, the department may not withhold the date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy or based on the court’s decision in that case.

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 an active criminal investigation or prosecution. Based on your representation, we conclude the release of the information at issue, which you have marked, 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 information you marked.

However, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, you have marked most of the narrative portion of the submitted incident report as information you seek to withhold under section 552.108. The remaining information does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” related to each charge at issue in the submitted report be released as basic information. *See id.* Accordingly, we determine the city must release a sufficient portion of the narrative to encompass a detailed description of each offense at issue. Thus, with the exception of the basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

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. You state the department will withhold the motor vehicle record information you have marked pursuant to

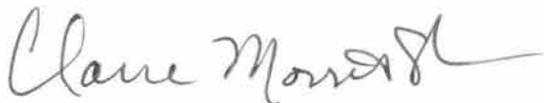
section 552.130(c) of the Government Code.¹ Accordingly, the department must withhold the motor vehicle record information you marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of the basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information you marked, and the additional information we marked, under section 552.130 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 580474

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).