



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2015

Mr. Matthew L. Butler  
Counsel for the City of Bedford  
Boyle & Lowry, L.L.P.  
4201 Wingren Drive, Suite 108  
Irving, Texas 75062-2763

OR2015-16828

Dear Mr. Butler:

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# 575488.

The City of Bedford (the "city") received a request from the first requestor for all reports concerning named individuals produced by the city's police department in the last ninety days and a request from the second requestor for a specified report. 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.

Initially, you note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-11271. In Open Records Letter No. 2015-11271, we concluded the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. However, in this instance, the second requestor is the individual whose information is at issue and thus, she has a right of access to information that was ruled confidential in Open Records Letter No. 2015-11271.<sup>1</sup> Because the relevant facts have changed as to the second requestor since the issuance of Open Records Letter No. 2015-11271, we conclude the city may not rely on that ruling as a previous determination in the regard to the second requestor. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as

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<sup>1</sup>See Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the city must continue to rely on Open Records Letter No. 2015-11271 in regard to the first requestor and withhold the requested information that is identical to the information previously requested and ruled upon by this office. However, we will address your arguments for the submitted information with regard to the second requestor and for any information not subject to the prior ruling.

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 demonstrated. *See id.* at 681-82.

The submitted information pertains to a report of alleged sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally, only information that 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. ORD 393 at 2; *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 first requestor in this case knows the identity of the alleged victim. We believe, in this instance, providing any of the submitted information to the first requestor would not preserve the victim’s common-law right to privacy. Therefore, we conclude the city must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. As noted above, however, the second requestor is the individual to whom the information at issue pertains. Thus, the second requestor has a right of access pursuant to section 552.023 of the Government Code to the submitted information that implicates the individual’s privacy, and the city may not withhold the submitted information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov’t Code § 552.023(b).

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction

or deferred adjudication. You state the submitted information pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to this information.

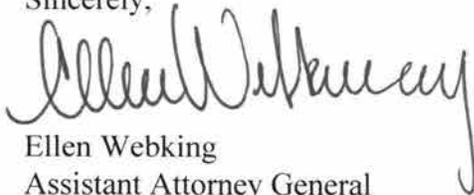
However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the submitted information from the second requestor under section 552.108(a)(2) of the Government Code. The city must release basic information to the second requestor.

In summary, the city must continue to rely on Open Records Letter No. 2015-11271 in regard to the first requestor and withhold the identical information in accordance with that ruling. To the extent the submitted information is not subject to the prior ruling, the city must withhold the information at issue from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold the submitted information from the second requestor under section 552.108(a)(2) of the Government Code. The city must release basic information to the second requestor.

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

Sincerely,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 575488

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)