



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 4, 2015

Mr. Richard L. Bilbie  
City Attorney  
City of Harlingen  
P.O. Box 2207  
Harlingen, Texas 78551

OR2015-18585

Dear Mr. Bilbie:

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# 578323.

The Harlingen Police Department (the "department") received a request for all information pertaining to a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We note some of the requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2011-09382 (2011). In that ruling, we determined (1) except for the information the department marked for release and the marked court-field documents, the department may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code; and (2) the department must withhold information we marked under section 552.130. We have no indication there has been any change in the law, facts, or circumstances on which

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the previous ruling was based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the department must rely on Open Records Letter No. 2011-09382 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the information was not at issue in Open Records Letter No. 2011-09382, we address your arguments against disclosure.

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). Generally, 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, 710 (Tex. 1977). You state the submitted information relates to a murder case currently on appeal and, as of the date the department received the instant request, the mandate of the Court of Criminal Appeals had yet to be issued. Based upon this representation, we conclude the release of the submitted information 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, 186-87 (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, 560-61 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108(a)(1) 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 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

We understand you to claim the basic information is excepted from disclosure in its entirety under section 552.101 of the Government Code. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although you assert the basic information is confidential in its entirety pursuant to common-law privacy, we find this is not a situation where all of this information must be withheld to protect any individual's privacy interest. You also assert release of the basic information could cause damage to the reputations of the individuals involved. We note, however, false-light privacy is not an actionable tort in Texas. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994); Open Records Decision No. 579 (1990). Further, we note, the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Comm'ns 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))). Upon review, we find you have failed to demonstrate any portion of the basic information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department may not withhold the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the department must rely on Open Records Letter No. 2011-09382 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the submitted information was not at issue in Open Records Letter No. 2011-09382, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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 is dispositive, we need not address your remaining arguments under sections 552.101 and 552.103 of the Government Code.

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 black ink that reads "Cole Hutchison". The signature is written in a cursive, slightly slanted style.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/som

Ref: ID# 578323

Enc. Submitted documents

c: Requestor  
(w/o enclosures)