



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2015

Ms. Kathleen M. Kennedy
Chief Civil Attorney
Jefferson County Criminal District Attorney
1085 Pearl Street, 3rd Floor
Beaumont, Texas 77701

OR2015-18808

Dear Ms. Kennedy:

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# 578618.

The Jefferson County Criminal District Attorney's Office (the "district attorney's office") received a request for sixteen categories of information relating to a specified incident. The district attorney's office states it will release the information in Exhibit B, but claims the information in Exhibit C is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted representative sample of information.¹

We note the district attorney's office has redacted some of the information in Exhibit B. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or has statutory authorization to withhold the information without requesting a decision under the Act. *See Gov't Code* § 552.301(a), (e)(1)(D). The district attorney's office does not assert, nor does our review of our records indicate, the district attorney's office is authorized to withhold

¹We 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 those records contain substantially different types of information than that submitted to this office.

this information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). Therefore, this type of information must be submitted in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the district attorney's office must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See Gov't Code* § 552.302.

Section 552.103 of the Government Code provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The district attorney's office states the information in Exhibit C pertains to a criminal prosecution that was pending with the district attorney's office on the date it received the request for information. Based on this representation, we agree section 552.103(a) is applicable to the information at issue. However, the information at issue involves alleged criminal activity. Information normally found on the front page of an offense or incident report is generally considered public. *See Houston Chronicle Publishing Co. v. City of*

Houston, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). This office has determined section 552.103 does not except from release basic information about a crime. See Open Records Decision No. 362 at 2 (1983). We note basic information includes, among other categories of information, the identification and description of the complainant and a detailed description of the offense. See ORD 127 at 3-4. Thus, with the exception of basic information, the district attorney's office may withhold the information in Exhibit C under section 552.103(a) of the Government Code.²

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 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.

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). In this instance, we understand the district attorney's office seeks to withhold the entirety of the basic information in Exhibit C under section 552.101 in conjunction with common-law privacy. However, the district attorney's office has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the district attorney's office may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis. However, upon review, we find some of the basic information and some of the information in Exhibit B, which we have marked, identify a sexual assault victim, and therefore satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the district

²As our ruling is dispositive, we need not address the district attorney's office's remaining argument against disclosure of this information.

attorney's office has failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing information pertaining to an identified individual. Therefore, the district attorney's office may not withhold any of the remaining basic information in Exhibit C under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the district attorney's office may withhold the information in Exhibit C under section 552.103(a) of the Government Code. The district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must release the remaining basic information in Exhibit C.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 578618

Enc. Submitted documents

c: Requestor
(w/o enclosures)