



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2015

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2015-21898

Dear Mr. Grove:

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# 583621.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all police reports for a specified address during a specified period of time. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 11-30262 relates to a pending criminal investigation. Based on your representations and our review, we find that release of report number 11-30262 would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to report number 11-30262. *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).

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[.]” Gov’t Code § 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. A governmental body that claims an exception to disclosure under section 552.108(a)(2) must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state incident report numbers 12-22074, 12-22291, 14-24941, 14-26268, 14-26382, 14-29694, 14-31673, 14-31683, 15-1612, and 15-5837 concern concluded criminal investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to incident report numbers 12-22074, 12-22291, 14-24941, 14-26268, 14-26382, 14-29694, 14-31673, 14-31683, 15-1612, and 15-5837.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page 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 deemed public by *Houston Chronicle*). We note basic information includes a detailed description of the offense and the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. *See* ORD 127. We further note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of basic information, the sheriff’s office may withhold report number 11-30262 under section 552.108(a)(1) of the Government Code and report numbers 12-22074, 12-22291, 14-24941, 14-26268, 14-26382, 14-29694, 14-31673, 14-31683, 15-1612, and 15-5837 under section 552.108(a)(2) of the Government Code.¹

You assert some of the remaining information, including portions of the basic information, is excepted from public disclosure under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Section 552.101 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 common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

person, and (2) is 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 met. *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). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. See also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities 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). However, the common-law right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded;” therefore, it may not be asserted solely on behalf of a deceased individual. *Moore v. Charles B. Pierce Film Enters. Inc.* 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

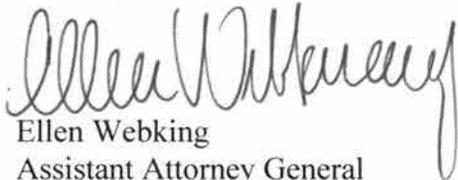
Report number 14-26382 pertains to an alleged sexual assault. Accordingly, as the sexual assault victim in this report is also the complainant, the sheriff’s office must withhold the sexual assault victim’s identifying information from the basic information in report number 14-2382 under section 552.101 in conjunction with common-law privacy. Additionally, we find the information we have marked in call slip number P140520426 and in the basic information in report number 14-31673 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation* and must be withheld under section 552.101 in conjunction with common-law privacy. However, portions of the remaining information pertain to a deceased individual that may not be withheld on the basis of this individual’s privacy interests. Further, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, the sheriff’s office may withhold report number 11-30262 under section 552.108(a)(1) of the Government Code and report numbers 12-22074, 12-22291, 14-24941, 14-26268, 14-26382, 14-29694, 14-31673, 14-31683, 15-1612, and 15-5837 under section 552.108(a)(2) of the Government Code. The sheriff’s office must withhold the sexual assault victim’s identifying information from the basic information in report number 14-2382 and the information we have marked in call slip number P140520426 and in the basic information in report number 14-31673 under section 552.101 of the Government Code in conjunction with common-law privacy. 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, 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# 583621

Enc. Submitted documents

c: Requestor
(w/o enclosures)