



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2015

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2015-21906

Dear Mr. Beauchamp:

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# 583541.

The Texas Commission on Law Enforcement (the "commission") received two requests from the same requestor for the education and certification record of a named individual; the names, ranks, and reasons for all discipline of any kind of all certified Department of Public Safety ("DPS") officials since January 1, 2014; all e-mail exchanges between a named individual and DPS officials since January 1, 2015; and the calendars of a named individual since January 1, 2015. You state the commission has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides, in pertinent part, the following:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of section 552.108(b)(1), a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See Open Records Decision No. 562 at 10 (1990).*

Section 552.108 is applicable only to records created by an agency, or portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493 at 2 (1988), 287 (1981).* Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. *See Open Records Decision No. 199 (1978).* In this instance, you have not demonstrated the commission is a law enforcement agency for the purposes of section 552.108. However, this office has concluded section 552.108 may be invoked by any proper custodian of information that relates to the underlying incident. *See Open Records Decision Nos. 474 (1987), 372 (1983).* Where a non-law enforcement agency has custody of information related to an ongoing criminal investigation of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information is related to an ongoing criminal case and a representation from a law enforcement agency that it wishes to have the information withheld. You state the submitted information includes information used to prevent or detect criminal activity. You assert release of the information at issue would interfere with law enforcement duties. However, in this instance, you do not state, and have not otherwise demonstrated, any agency with a law enforcement interest seeks to withhold the information at issue. Accordingly, we find the commission has failed to demonstrate section 552.108(a)(1) or section 552.108(b)(1) of the Government Code is

applicable to the information at issue. Thus, the commission may not withhold any portion of the submitted information on either of these bases.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ 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 or 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).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). We conclude the commission must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the information we have marked under section 552.130 of the Government Code. The commission 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/>

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[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,

A handwritten signature in cursive script that reads "Nicole Thomas".

Nicole Thomas
Assistant Attorney General
Open Records Division

NT/akg

Ref: ID# 583541

Enc. Submitted documents

c: Requestor
(w/o enclosures)