



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2016

Mr. George Haratsis
Counsel for the Texas Christian University Police Department
McDonald Sanders, P.C.
777 Main Street, Suite 1300
Fort Worth, Texas 76102

OR2016-00083

Dear Mr. Haratsis:

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# 592630.

The Texas Christian University Police Department (the "department"), which you represent, received two requests from different requestors for a specified incident report and a request from the first requestor for information pertaining to sexual assaults reported on campus during a specified time period and the protocol for reporting sexual assaults.¹ You state you have released some information to the first requestor. You claim portions of the submitted information are not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the

¹We note the department sought and received clarification from the second requestor of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Government Code.² We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the 84th Legislature added section 51.212(f) of the Education Code, which reads as follows:

(f) A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.

Educ. Code § 51.212(f). You inform us the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, you acknowledge the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. You state the submitted information is maintained by the department. However, you argue portions of the information do not relate “solely to law enforcement activities.” You state many of the duties of the department “fall outside the scope of official duties performed by traditional law enforcement officers.” You state the information you have marked was created for use by the Office Campus Life – Deans Office and relates to the student “disciplinary process” of Texas Christian University. You argue the information you have marked relates to the student’s status with Texas Christian University and not his status within the criminal justice system. However, the submitted information reflects it involves an investigation of possible criminal violations investigated by the department. *See* Penal Code § 22.01 (assault). Thus, upon review, we find the submitted information relates “solely to law enforcement activities.” *See id.* Therefore, we will address your claimed exceptions against disclosure of the submitted information.

Next, you assert portions of the submitted information are excepted from disclosure under the Family Education Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code. However, FERPA is not applicable to law enforcement records maintained by a law enforcement agency that were created for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. As noted above, the submitted information consists of law enforcement records maintained and created by the department for a law enforcement purpose. Thus, the submitted information is not subject to FERPA and no portion of it may be withheld on that basis. *See* Gov’t Code § 552.026 (incorporating FERPA into Act).

²Although you raise section 552.026 of the Government Code, this section is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. *See* Gov’t Code § 552.026.

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[.]” *Id.* § 552.108(a)(1). 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 (Tex. 1977). You state the submitted information relates to a pending investigation. Based on your representation and our review, we find 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 (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). Thus, section 552.108(a)(1) is applicable to the submitted information.

We note, and you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 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 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the identity of the complainant, but does not include the complainant’s date of birth, driver’s license number, or the complainant’s telephone number or home address, unless the address is the location of the crime, premises involved, or place of arrest. *See* ORD 127. Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.³

You assert portions of the basic information are confidential under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

In Open Records Decision No. 393 (1983), this office concluded generally, only the information that either identifies or tends to identify a victim of sexual assault or other

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

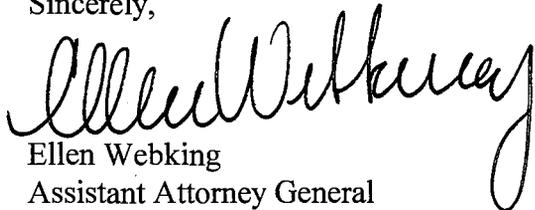
sex-related offense may be withheld under common law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information 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, the complainant is also the alleged victim. Therefore, in releasing basic information, the department must withhold the victim's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy.

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# 592360

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)