



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 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

OR2016-01644

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# 594928.

The Texas Christian University Police Department (the "department"), which you represent, received a request for information pertaining to all sex offense cases in a specified annual report that were reported during a specified time period. You claim the submitted information is not subject to the Act. In the alternative, you claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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.

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

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 section 51.212(f) only applies to “incidents and law enforcement activities and related records occurring after [section 51.212(f)’s] effective date.” You state that pursuant to section 311.022 of the Government Code, a statute is presumed to be prospective in its operation unless expressly made retrospective. Gov’t Code § 311.022. Section 51.212(f) of the Education Code went into effect on September 1, 2015. The department received the instant request on October 23, 2015 and sought a ruling from our office on November 6, 2015. Upon review, we find the submitted information consists of records maintained by the department on or after the effective date of section 51.212(f) of the Education Code. Thus, applying section 51.212(f) to the submitted information is a prospective application of the statute. Accordingly, pursuant to section 51.212(f), the submitted information is subject to the Act to the extent such information relates solely to law enforcement activities, and the department must release it unless the department demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302. You acknowledge the submitted information relates solely to law enforcement activities. Accordingly, we will address your claimed exceptions against its disclosure.

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).

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 information you have marked relates to open and pending investigations. Based on your representation and our review, we find release of the information you have marked 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 information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the information you have marked pertains to investigations that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue.

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 information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, 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. We further note basic information does not include dates of birth. *See* ORD 127 at 3-4. In this instance, you seek to withhold the narrative portion of the submitted reports under section 552.108. The remaining portions of the reports do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See id.* Accordingly, we determine the department must release a sufficient portion of the narrative of each report to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of basic information, the department may withhold the information it has marked under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.<sup>2</sup>

We note portions of the basic information are subject to 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. This office has also concluded information that identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

privacy. Open Records Decision No. 393 at 2 (1983). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest and thus, none of it may be withheld under section 552.101 of the Government Code on that basis.

In summary, with the exception of basic information, which must be released, the department may withhold the information it has marked under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/bhf

Ref: ID# 594928

Enc. Submitted documents

c: Requestor  
(w/o enclosures)