



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2016

Ms. Veta Byrd-Perez
Associate General Counsel
Office of the General Counsel
Rice University
P.O. Box 1892
Houston, Texas 77251-1892

OR2016-06815

Dear Ms. Byrd-Perez:

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# 603039 (ORR#2015-015).

The Rice University Police Department (the "department") received a request for all incident reports pertaining to a specified incident.¹ The department claims the submitted information is not subject to the Act. In the alternative, the department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the department's claim the submitted information is not subject to the Act. Section 51.212(f) of the Education Code 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.

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

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 with regard to information maintained by the department only to the extent to which such information relates solely to law enforcement activities. You indicate the submitted information is maintained by the department. However, you assert the report does not relate solely to law enforcement activities and, thus, is not subject to release under the Act pursuant to section 51.212(f) because it “relates to a medical emergency, not a criminal investigation, and resulted in an information report.” You further assert “[the department]’s presence was not to enforce criminal laws but rather to support the emergency medical services team that was attending to the student.” Nevertheless, this report was created by the department for the purpose of law enforcement. Therefore, we find this police report relates solely to law enforcement activities for purposes of section 51.212(f) of the Education Code, and thus is subject to the Act. Accordingly, this information must be released, unless it falls within an exception to public disclosure under the Act. *See Gov’t Code* §§ 552.006, .021, .301, .302. Consequently, we will address the department’s arguments against its disclosure under the Act.

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. *Id.* § 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). The department states the submitted information pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information includes, among other items, a detailed description of the offense, and the identification of the complainant, but does not include dates of birth and the identity of a victim who is not the complainant. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, which must contain a sufficient portion of the narrative to encompass a detailed description of the offense, the department may withhold the information it has marked under section 552.108(a)(2) of the Government Code.²

²As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of this information.

The department asserts the basic information is 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. 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 department has failed to demonstrate any of the basic information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of the basic information 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 submitted information under section 552.108(a)(2) of the Government Code.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 603039

Enc. Submitted documents

c: Requestor
(w/o enclosures)