



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 19, 2016

Ms. Judy Hickman  
Assistant Supervisor  
Beaumont Police Department  
P. O. Box 3827  
Beaumont, Texas 77704

OR2016-08794

Dear Ms. Hickman:

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# 608213.

The Beaumont Police Department (the "department") received a request for information pertaining to a named individual, including two specified incidents. The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing fact, the publication of which would be highly objectionable to a reasonable 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 satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).*

reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The requestor asks for all information held by the department concerning a named individual. Therefore, to the extent the department maintains any unspecified law enforcement records depicting the individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the requestor also asks for information pertaining to specified incidents. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and the department may not withhold it under section 552.101 on that basis.

Section 552.108(a) 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: (1) 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 the release of the information at issue 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, 710 (Tex. 1977). The department states case number 2016002623, which was specifically requested, relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). Basic information refers to the 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*). Thus, with the exception of basic information, the department may withhold case number 2016002623 under section 552.108(a)(1) of the Government Code.<sup>2</sup>

We understand the department to assert the submitted audio recording, which was also specifically requested, is excepted from disclosure under section 552.108(b) of the Government Code, which excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to

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<sup>2</sup>As our ruling is dispositive, we do not address the other argument of the department to withhold this information.

law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section 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.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

The department argues release of the submitted audio recording would interfere with law enforcement because it might cause the witness at issue to be threatened or intimidated. *See* Open Records Decision No. 297 (1981) (names and statements of witnesses maybe withheld if disclosure might subject witnesses to possible intimidation or harassment or harm prospects of future cooperation between witnesses and law enforcement). However, we find the department has failed to demonstrate the release of the recording would interfere with law enforcement. Accordingly, the department may not withhold the submitted audio recording under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code encompasses common-law privacy, which is subject to the two-part test discussed above, and types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *See Indus. Found.* 540 S.W.2d 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 some of the information in the submitted audio recording satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, this information, which we have indicated, is confidential under

common-law privacy. The department states it lacks the technical capability to redact information from this recording. However, because the department had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of it. Therefore, the department must withhold the information we have indicated in the submitted recording under section 552.101 of the Government Code in conjunction with common-law privacy, but may not withhold any of the remaining information at issue on that ground.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note section 552.117 applies only to information that a governmental body holds in an employment context. The information that the department seeks to withhold under section 552.117 consists of law enforcement records and, thus, we find the department does not maintain it in an employment capacity. Accordingly, the department may not withhold this information under section 552.117(a)(1) of the Government Code.

Nevertheless, section 552.1175 of the Government Code may be applicable to the cellular telephone number the department has indicated in the submitted audio recording. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). As discussed above, because the department had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of it. Therefore, the department must withhold the cellular telephone number the department has indicated in the submitted recording under section 552.1175 if the individual at issue is a licensed peace officer, she elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not provided to her at public expense. However, the department may not withhold this information under section 552.1175 if the individual is not a currently licensed peace officer, she does not elect to restrict access to this information in accordance with section 552.1175(b), or the cellular telephone service was provided to her at public expense.

To conclude, to the extent the department maintains any unspecified law enforcement records depicting the individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which the department must release, the department may withhold case number 2016002623 under section 552.108(a)(1) of the Government Code. For the submitted audio recording, the department must (1) withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the cellular telephone number the department has indicated in the submitted recording under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer, she elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not provided to the individuals at issue at public expense; and (3) release the remaining information at issue.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 608213

Enc. Submitted documents

c: Requestor  
(w/o enclosures)