



KEN PAXTON

ATTORNEY GENERAL OF TEXAS

June 14, 2016

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main, Suite 308
Temple, Texas 76501

OR2016-13498

Dear Ms. Thomas:

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# 613981.

The City of Temple (the "city") received two requests from different requestors for a specific case number and information pertaining to two specified incidents. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must

be withheld to protect the individual's privacy. In this instance, Exhibit C reveals that the first requestor knows the identity of the individual involved as well as the nature of the incident at issue in Exhibit C. Therefore, withholding only the individual's identity or certain details of the incident from the first requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold Exhibit C in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will address the city's arguments against disclosure of Exhibit C to the second requestor and of the remaining information.

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[.]" 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 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). The city states the submitted information relates to an open criminal investigation and release of the information would interfere with that investigation. *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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable.

However, 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 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the remaining information from the first requestor and the submitted information from the second requestor under section 552.108(a)(1) of the Government Code.

We note portions of the basic information contain confidential information pursuant to common-law privacy. The two-prong test for common-law privacy was discussed above. *See Indus. Found.*, 540 S.W.2d at 681-82. 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, the information we have marked satisfies the standard articulated in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked in Exhibit C from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining basic 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, the city must withhold Exhibit C in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the city may withhold the remaining information from the first requestor and the submitted information from the second requestor under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the information we have marked in Exhibit C from the second requestor 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 613981

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)