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ATTORNEY GENERAL OF TEXAS

August 31, 2016

Ms. Vanessa A. Gonzalez
Counsel for Baylor University
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Building 1, Suite 300
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Austin, Texas 78746

OR2016-19736

Dear Ms. Gonzalez:

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# 624712.

The Baylor University Police Department (the "department") received a request for thirteen specified incident reports. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us some of the information at issue was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-24446 (2015). In that ruling, we determined, with the exception of basic information, the department may withhold report numbers A-0398 and A-0520 under section 552.108(a)(1) of the Government Code and report number B-0564 under section 552.108(a)(2) of the Government Code. However, in releasing basic information from report number B-0564, the ruling concluded the department must withhold the identifying information of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department may continue to rely on Open Records Letter No. 2015-24446 as a previous determination and release or withhold report numbers A-0398,

A-0520, and B-0564 in accordance with that ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider your arguments for 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 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 inform this office, and provide documentation showing, the information in Exhibits B1-B3 pertains to active criminal investigations or prosecutions. Based on your representation, we conclude the release of the information at issue 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 in Exhibits B1-B3.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. See 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.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You inform this office, and provide documentation showing, the information in Exhibits B7-B13 pertains to closed cases that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the information in Exhibits B7-B13.

However, we note 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identification of a complainant, but does not include the identity of a victim unless the victim is also the complainant. See ORD 127 at 3-4. Thus, with the exception of the basic information, which must be released,

¹As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

the department may withhold the information in Exhibits B1-B3 under section 552.108(a)(1) of the Government Code and may withhold the information in Exhibits B7-B13 under section 552.108(a)(2) of the Government Code.

You also claim the basic information is subject to the doctrine of 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 (1) contains highly intimate or embarrassing facts, 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). 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 information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must 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 at 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).

Upon review, we find some of the basic information contains identifying information of a sexual assault victim. This information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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. However, we find you have not demonstrated any of the remaining basic information is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the department may continue to rely on Open Records Letter No. 2015-24446 and withhold or release reports A-3098, A-0520, and B-0564 in accordance with the ruling. With the exception of basic information, the department may withhold Exhibits B1-B3 under section 552.108(a)(1) and Exhibits B7-B13 under section 552.108(a)(2). When releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must release the remaining basic information.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 624712

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)