



May 17, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-2647

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163054.

The City of Fort Worth (the "city") received a request for all police reports for six addresses. You state that the city has released some of the requested information. You claim, however, that some of the requested 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 representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that the information in Exhibit D consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the information in Exhibit D is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the city must not release the information in Exhibit D to the requestor.²

Section 552.101 also encompasses Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

- (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:
 - (1) if maintained on paper or microfilm, kept separate from adult files and records;

²We note that if the investigation has been referred to the Department of Protective and Regulatory Services ("DPRS"), a parent who is a requestor may be entitled to access to DPRS's records. Section 261.201(g) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DPRS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Offense report number 97709549 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, offense report number 97709549 is confidential pursuant to section 58.007(c) of the Family Code. The city must therefore withhold offense report number 97709549 in its entirety under section 552.101 of the Government Code.

You claim that the remaining submitted offense reports are excepted under section 552.108 of the Government Code. Section 552.108(a) provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally speaking, subdivisions 552.108(a)(1) and 552.108(a)(2) apply to two mutually exclusive types of information held by a law enforcement agency. Section 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. Based on the information you provided, we understand you to assert that the remaining submitted offense reports pertain to pending criminal cases. We therefore believe that the release of offense report numbers 96770240, 00159354, 01141042, 01723588, 01867167, 01952883, 02128364, and 02016867 "would interfere with the detection, investigation, or prosecution of crime." *Id.* As the city has already released the basic information about these offense reports, the city may withhold the remaining information pertaining to offense report numbers 96770240, 00159354, 01141042, 01723588, 01867167, 01952883, 02128364, and 02016867 from disclosure based on section 552.108(a)(1). We note that the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

You also contend that offense report numbers 99257893 and 99520279 are excepted under section 552.108(a)(1). We note, however, that the maximum statute of limitations for the crimes alleged in offense report numbers 99257893 and 99520279 is two years from the date of the commission of the offense. Code Crim. Proc. art. 12.02; *see also* Penal Code § 28.03. The offenses at issue in offense report numbers 99257893 and 99520279 were committed more than two years prior to the city's receipt of the current request. You have not explained how or why release of this information would interfere with the investigation of offenses for which the statute of limitations has run. Thus, because you have not shown the applicability of section 552.108, we conclude that the city may not withhold the information in offense report numbers 99257893 and 99520279 under section 552.108.

We note that section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license issued by an agency of this state. Therefore, the city must withhold the driver's license numbers, license plate numbers, and vehicle identification numbers we have marked in the submitted documents under section 552.130.

We note that some of the submitted information must be withheld under section 552.101 in conjunction with common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Id.* at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has concluded that common-law privacy protects some kinds of medical information or information indicating disabilities or specific illnesses. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The submitted information includes such intimate information. Further, we believe there is no legitimate public interest in this information. Accordingly, we have marked the information in the submitted documents that must be withheld under section 552.101 in conjunction with common-law privacy.

Finally, we note that when a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). We have marked the criminal history information in the submitted documents that the city must withhold under section 552.101 and *Reporters Committee*.

To summarize: (1) the city must withhold the information in Exhibit D from disclosure under section 552.101 of the Government Code and section 261.201 of the Family Code; (2) the city must withhold offense report number 97709549 from disclosure under section 552.101 and section 58.007 of the Family Code; (3) with the exception of the basic information, which the city has already released, the city may withhold offense report numbers 96770240, 00159354, 01141042, 01723588, 01867167, 01952883, 02128364, and 02016867 from disclosure based on section 552.108(a)(1); (4) the city must withhold the driver's license numbers, license plate numbers, and vehicle identification numbers we have marked under section 552.130; and (5) the city must withhold the intimate information and criminal history information we have marked under section 552.101. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 163054

Enc: Submitted documents

c: Ms. Leah D. Commons
c/o City of Fort Worth
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(w/o enclosures)