



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2003

Mr. Darrell G-M Noga  
Roberts & Smaby, P.C.  
1717 Main Street, Suite 3000  
Dallas, Texas 75201

OR2003-8915

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192575.

The City of Coppell (the "city"), which you represent, received a request for "all police records for the house at 769 Armstrong for the year 2003 [and] all police records for 742 Bethel School from August 2003 to the present." You state that some responsive information has been or will be released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim the information in Exhibit 3 is excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007, which provides in pertinent part 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;

(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.

Section 58.007 applies to information that involves a juvenile suspect or offender, but does not apply where the information in question involves only juvenile complainants or witnesses. Upon review, we find that the information in Exhibit 3 does not identify a juvenile as a criminal suspect and does not indicate that a crime or delinquent conduct is being alleged. *See* Fam. Code § 51.04. Accordingly, we determine that the city may not withhold any of the submitted information under section 552.101 in conjunction with section 58.007 of the Family Code.

We note, however, that the documents in Exhibit 3 contain a Texas driver's license number that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license, a Texas motor vehicle title, or a Texas motor vehicle registration. Gov't Code § 552.130. The city must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.

Next, you contend that the information in Exhibit 2 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Exhibit 2 relates to a pending criminal investigation. Based on your representations and our review, we agree that section 552.108 generally applies to the information in Exhibit 2. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, basic information regarding the incident at issue may not be withheld pursuant to section 552.108(a)(1), even if this information is not actually located on the front page of the offense report. We note, however that a portion of the basic information from the documents in Exhibit 2 is protected by common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. We have marked information in Exhibit 2 and Exhibit 3 that the city must withhold under section 552.101 in conjunction with common-law privacy. With the exception of the remaining basic information, the city may withhold the remainder of Exhibit 2 pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, we have marked information in Exhibit 2 and Exhibit 3 that is protected by common-law privacy and must be withheld under section 552.101 of the Government Code. With the exception of basic information that is not protected by privacy, the city may withhold the remainder of Exhibit 2 under section 552.108(a)(1) of the Government Code. We have marked a Texas driver's license number in Exhibit 3 that must be withheld under section 552.130 of the Government Code. The remainder of Exhibit 3 must be released to the requestor.

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

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<sup>1</sup>Based on this finding, we do not reach your other claimed exceptions for the information in Exhibit 2.

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 Dep't of Pub. 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 192575

Enc: Submitted documents

c: Ms. Candy Sheehan  
759 Pelican  
Coppell, Texas 75019  
(w/o enclosures)