



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2006

Ms. YuShan Chang
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 1562
Houston, Texas 777251-1562

OR2006-09938

Dear Ms. Chang:

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# 257804.

The Houston Police Department (the "department") received a request for "a crime grid search [and] all corresponding police reports" related to a specified address. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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" and

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.

encompasses information made confidential by statute. Gov't Code § 552.101. Section 261.201(a) of the Family Code provides 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 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also* Open Records Decision No. 440 at 2 (1986) (addressing statutory predecessor). Upon review, we find that the information contained in Exhibits 7 and 9 consists of files, reports, records, communications, or working papers used or developed in an investigation of abuse or neglect under chapter 261 of the Family Code. Thus, this information is within the scope of section 261.201 of the Family Code. You state that the department has not adopted a rule that governs the release of this type of information. Accordingly, we conclude that the department must withhold Exhibits 7 and 9 in their entirety pursuant to section 552.101 in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses section 58.007 of the Family Code. Section 58.007(c) 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.

Fam. Code § 58.007(c). We find that the information contained in Exhibit 3 involves juvenile conduct that occurred after September 1, 1997. None of the exceptions in section 58.007 apply in this instance. Therefore, Exhibit 3 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We now turn to your arguments against disclosure under common law privacy for a portion of the remaining submitted information. Section 552.101 also encompasses 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. We note, however, that your letter requesting a ruling from this office, which was copied to the requestor, reveals the nature of the incident at issue. Thus, withholding the details of the incident would not sufficiently protect the privacy of the individual who is the subject of the information. Instead, and in this specific instance, we conclude that the identity of the individual to whom the private information pertains must be withheld under section 552.101 of the Government Code and common law privacy. We have marked the information in Exhibit 5 that must be withheld under section 552.101. The remaining information is not private and may not be withheld under section 552.101.

You claim that a portion of the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent part 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[.]

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1)-(2), (c). 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* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You inform us that Exhibits 2, 6, and 8 relate to pending criminal investigations. Based on this representation, we find that you have established that release of the information at issue would interfere with the detection, investigation, or prosecution of crime and is therefore subject to section 552.108(a)(1). *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). You inform us that Exhibits 4 and 10 pertain to criminal investigations that concluded in results other than conviction or deferred adjudication. This information is therefore subject to section 552.108(a)(2).

We note, however, section 552.108 of the Government Code does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic information does not include driver's license numbers. *See id.* Thus, with the exception of basic information, the department may withhold Exhibits 2, 6, and 8 pursuant to section 552.108(a)(1), and Exhibits 4 and 10 pursuant to section 552.108(a)(2). We note that the department has the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must withhold: 1) Exhibits 7 and 9 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; 2) Exhibit 3 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; and 3) the information we have marked in Exhibit 5 pursuant to section 552.101 of the Government Code in conjunction with

common law privacy. Except for basic information, the department may withhold Exhibits 2, 4, 6, 8, and 10 pursuant to section 552.108 of the Government Code.²

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. Although there is no statutory deadline for

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 257804

Enc. Submitted documents

c: Ms. Nancy Sutton Ward
Weinberg, Wheeler, Hudgins, Gunn & Dial, L.L.C.
950 East Paces Ferry Road, Suite 3000
Atlanta, Georgia 30326
(w/o enclosures)