



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2007

Ms. Lizbeth Islas Plaster
Assistant City Attorney
City of Lewisville
P. O. Box 299002
Lewisville, Texas 75029-9002

OR2007-00820

Dear Ms. Plaster:

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# 269703.

The Lewisville Police Department (the "department") received a request for:

1. "Copies of any 'use of force' report or other record documenting the use of any weapon that would deliver an electric shock to a person. . . since Jan. 1, 2000[.]
2. Copies of any offense or incident report documenting the circumstances under which [department] officers came into contact with any person on whom a weapon that would deliver an electric shock to a person was used since Jan. 1, 2000.
3. Any custodial death report filed by or on behalf of [the department] documenting the death of any person in [department] custody on whom a weapon that would deliver an electric shock to a person was used since Jan. 1, 2000.
4. Copies of any reports of training injuries sustained by officers or employees involving weapons that would deliver an electric shock.
5. Copies of any policies regarding [the] department's use of force."

You inform us that the department does not maintain information responsive to items 3 and 4 of the request.¹ You state that you made available to the requestor some information responsive to items 1 and 2 of the request, as well as all information responsive to item 5 of the request. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note that the requestor, in the request for information, specifically excludes the following information from the request: driver's license numbers, license plate numbers, vehicle identification numbers, handgun or Taser serial numbers, social security numbers, bank account numbers of suspects, FBI numbers, and juvenile information, including name, age, and address. Thus, this information is not responsive to the present request. Accordingly, we do not address this information and it need not be released.

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. This exception encompasses information made confidential by statute. Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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;
- (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.

¹ The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Fam. Code. § 58.007(c). Section 58.007 is only applicable to records that pertain to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.*; *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Furthermore, for purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The information submitted as Exhibit B-2 pertains to juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions to confidentiality in section 58.007 apply to this information. Therefore, we conclude that Exhibit B-2 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, although you claim that the information submitted as Exhibit B-1 is subject to section 58.007, upon review, we find that Exhibit B-1 is not a juvenile law enforcement record but rather a use of force report. As such, Exhibit B-1 may not be withheld under section 552.101 in conjunction with section 58.007.

Section 552.101 also encompasses 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). The department must withhold the information submitted in Exhibits C-1 and C-2 that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. None of the remaining information in Exhibits C-1 and C-2 may be withheld under section 552.101 on that basis.

The department claims some of the information in Exhibits D-1, D-2, D-3, E-1, E-2, and E-3 is subject to 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.” Gov’t Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note that section 552.108(a)(1) is generally not applicable to internal administrative records that do not involve the investigation or prosecution of crime. *See City of Fort*

Worth, 86 S.W.3d 320, *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). Exhibits D-1 and E-1 include department use of force reports, which are administrative records. Although we are cognizant of the fact that use of force investigations are based on an underlying arrest or detention, the focus of these investigations is on the propriety of an officer's conduct, not the underlying arrests. You do not state, nor does it appear, that the use of force investigations in Exhibits D-1 and E-1 relate to criminal investigation into an officer's conduct. Accordingly, we conclude that the department may not withhold the documents regarding the use of force investigations in Exhibits D-1 and E-1, which we have marked, under section 552.108(a)(1).

You state the remaining information in Exhibits D-1, D-2, D-3, E-1, E-2, and E-3 pertain to pending criminal investigations and prosecutions. Based upon this representation, we find that the department has demonstrated the applicability of section 552.108(a)(1) to the remaining information in Exhibits D-1, D-2, D-3, E-1, E-2, and E-3. See generally *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).

However, section 552.108 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). Thus, with the exception of basic information, the department may withhold the remaining information in Exhibits D-1, D-2, D-3, E-1, E-2, and E-3, which we have marked, under section 552.108.

In summary, this ruling does not address the submitted information that is not responsive to the request and it need not be released. The department must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the information submitted in Exhibits C-1 and C-2 that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold the information we have marked in Exhibits D-1, D-2, D-3, E-1, E-2, and E-3 under section 552.108 of the Government Code. The remaining submitted 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, 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 contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 269703

Enc. Submitted documents

c: Ms. Rian Johnson
University of North Texas
c/o Light of Day Project
400 South Record Street, Suite 240
Dallas, Texas 75202
(w/o enclosures)