



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-14510

Dear Mr. Phillips:

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# 325459.

The City of Fort Worth (the "city") received a request for information related to a particular address and its surrounding area from 2005 to the present.¹ You state the city will release most of the requested information. You also state that the city will redact certain Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In addition, you state the city

¹We note the requestor made his request for information on July 18, 2008; however, you explain that the city required the requestor to make a deposit for payment of the anticipated costs in accordance with section 552.263 of the Government Code, and that on August 4, 2008, the deposit was received. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond). Thus, we agree that August 4, 2008, is the date the city received this specific request for information.

has redacted social security numbers pursuant to section 552.147 of the Government Code.² 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 the requestor has agreed to the redaction of 9-1-1 caller information, criminal history information, and Texas motor vehicle record information. Accordingly, any of this information contained within the submitted documents is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

You claim Exhibit C is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. 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). Upon review, we agree the documents contained within Exhibit C were used or developed in investigations of child abuse. Therefore, these documents are within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit C is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold Exhibit C from disclosure under section 552.101 of the Government Code as information made confidential by law.

²Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Section 552.101 also encompasses section 58.007 of the Family Code. Section 58.007 makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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.

Id. § 58.007(c). 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). You claim Exhibit D is excepted from disclosure pursuant to section 58.007. We agree that most of the reports contained in Exhibit D are subject to section 58.007. However, call number 050731815 does not identify a juvenile suspect or offender. Therefore, call number 050731815 is not confidential under section 58.007 of the Family Code and may not be withheld under section 552.101 of the Government Code. The remaining reports in Exhibit D, however, identify juvenile suspects alleged to have engaged in delinquent conduct that occurred after September 1, 1997. Thus, these reports fall within the purview of section 58.007(c) of the Family Code. Since it appears that none of the exceptions to disclosure in section 58.007 apply, except for call number 050731815 the reports contained in Exhibit D are confidential pursuant to section 58.007(c) and must be withheld in their entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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). The types 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. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Therefore, the city must withhold the information we have marked in Exhibit G under section 552.101 in conjunction with common-law privacy. The remaining information in Exhibit G, however, is not protected by common-law privacy and may not be withheld under section 552.101 on that basis.

Next, we address your arguments under section 552.108 of the Government Code for Exhibit E and Exhibit F. 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), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide affidavits from the Tarrant County District Attorney’s Office reflecting, the reports contained in Exhibit E relate to pending criminal prosecutions. You also provide affidavits from the Fort Worth Police Department stating the reports contained in Exhibit F are the subject of open and pending criminal investigations. Based upon these representations and our review, we conclude the release of the reports 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), *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). Accordingly, section 552.108(a)(1) is applicable to Exhibit E and Exhibit F.

We note, however, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, the city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, the city may withhold Exhibit E and Exhibit F under section 552.108(a)(1).

In summary, the city must withhold Exhibit C under section 552.101 in conjunction with section 261.201 of the Family Code. Except for call number 050731815, the city must

withhold Exhibit D under section 552.101 in conjunction with section 58.007 of the Family Code. The information we have marked in Exhibit G must be withheld under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the city may withhold Exhibit E and Exhibit F under section 552.108(a)(1). 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

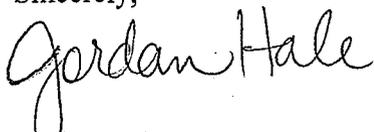
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink that reads "Jordan Hale". The signature is written in a cursive, flowing style.

Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 325459

Enc. Submitted documents

c: Mr. Kenneth M. Stillman
Law Office of Kenneth M. Stilman
12700 Park Central Drive, Suite 1900
Dallas, Texas 75251
(w/o enclosures)