



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2009-01097

Dear Ms. Byles:

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# 333257 (Fort Worth ID# 0369-09).

The City of Fort Worth (the "city") received a request for specified police records. You state that you have released some of the requested information. You state that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006). *See Gov't Code* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you are withholding social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the some of the submitted information is excepted from disclosure under section 552.101,

¹Section 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.

552.108, 552.130, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note that the city failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D).

The city submitted only a partial copy of the written request for information for our review. The submitted portion of the request asks for a copy of specified reports that are listed in an attachment. However, the city did not submit to this office the attachment listing the reports requested. Thus it is clear that the submitted portion of the request does not fully identify the requested information. We therefore find that, because the city did not submit the entire written request for information, the city has failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records

²We note that you did not raise section 552.137 as an exception to disclosure within ten business days of the date the department received the present request. *See* Gov't Code §§ 552.301(b), .302. However, because section 552.137 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will consider your claim under section 552.137. *See id.*; *see also* Open Records Decision Nos. 150 at 2 (1977), 319 (1982).

³We 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.

Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us that the Tarrant County District Attorney (the "district attorney") asserts a law enforcement interest in a portion of the submitted information. Therefore, we will determine whether the city may withhold the information on behalf of the district attorney under section 552.108. In addition, because sections 552.101, 552.130, and 552.137 can provide compelling reasons for non-disclosure, we will also consider your claims under these exceptions.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 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, D, and E.

Fam. Code § 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). We note, however, that section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* § 58.007. You indicate that none of the exceptions in section 58.007 apply to the submitted information. Upon review, we agree that some of

the information you have marked in Exhibits G and E-2 and E-3 of the information submitted in December involves juvenile delinquent conduct occurring after September 1, 1997. *See id.* §§ 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). Although the remaining information involves juveniles, you have failed to explain how it pertains to juvenile delinquent conduct or conduct indicating a need for supervision as those terms are defined by the Family Code. Thus, you have failed to establish that section 58.007 of the Family Code is applicable to the remaining information. Accordingly, with the exception of the information we have marked for release, the information you seek to withhold under section 58.007 is confidential and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

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). The information at issue was used or developed in investigations of alleged abuse of a child. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on our review, we find that the marked information is 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, this information is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

You claim that portions of the remaining information are excepted from disclosure under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772.

See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000.

You state that the city is part of an emergency communication district established under section 772.218. You indicate that the telephone numbers and addresses that you have marked are related to 911 calls and were obtained from a 911 service provider. Based on your representations, we conclude that the city must withhold the originating telephone numbers and addresses you have marked in the remaining information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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 also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision No. 545 (1990). Upon review, we conclude that the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We now address your argument under section 552.108 of the Government Code for portions of the submitted information. 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 inform us, and provide documentation showing, that marked portions of the submitted information pertain to a pending criminal prosecutions. You state, and provide an affidavit reflecting, that the Tarrant County District Attorney objects to release of this information, as such a release would interfere with the ongoing criminal prosecutions. Based on these representations and our review of the submitted information, we conclude that section 552.108(a)(1) is applicable in this instance. 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).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information, the city may withhold the information in Exhibits C-1 through C-8 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.

Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We agree that the city must withhold the Texas driver's license and motor vehicle information that you have highlighted, in addition to the information we have marked, under section 552.130.

Finally, you raise section 552.137 of the Government Code for a portion of the submitted information. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address you have marked is not of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the marked e-mail address in accordance with section 552.137, unless the city receives consent for its release.

To conclude, the city must withhold the following information under section 552.101 of the Government Code: 1) the information you have marked under sections 261.201 and 58.007 of the Family Code, with the exclusion of the information we have marked for release; 2) the information you have marked under section 772.118 of the Health and Safety Code; 3) the information we have marked under common-law privacy. In addition, with the exception of basic information, the city may withhold the information you have marked under section 552.108 of the Government Code. Finally, the city must withhold the information you have highlighted, in addition to the information we have marked, under section 552.130 and the information you have marked under 552.137 of the Government Code. The city must release the remaining information.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 333257

Enc. Submitted documents

c: Requestor
(w/o enclosures)