



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 11, 2009

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-08073

Dear Ms. Webster:

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# 345706 (Reference # LGL-09-291).

The Waco Police Department (the "department") received a request for police reports and 9-1-1 calls related to two specified addresses and for a particular time period. You state the department will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 section encompasses information protected by other statutes, including section 261.201 of the Family Code, which 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, audiotapes, videotapes, 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 determine that report numbers 08-11571 and 08-4842 were used or developed in an investigation of child abuse. Thus, these reports are within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(defining “abuse” for purposes of Fam. 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). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, report numbers 08-11571 and 08-4842 are confidential pursuant to section 261.201 of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.¹

Next, you raise section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See Open Records Decision No. 649 (1996)*. You state the City of Waco is part of an emergency communication district that was established under section 772.318.² You claim portions of the remaining information are subject to section 772.318, however, you do not inform us if the information at issue was furnished by a 9-1-1 service supplier. Therefore, to the extent the originating telephone numbers and addresses of the 9-1-1 callers, which we have marked, were supplied by a 9-1-1 service supplier, this information is confidential under section 772.318 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code. However, if this information was not provided by a 9-1-1 service supplier to the emergency communication district, this information may not be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code and must be released.

We note some of the remaining information is excepted from disclosure under the doctrine of common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy 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 some kinds of medical

¹As our ruling is dispositive, we need not address your remaining arguments against the disclosure of these reports.

²Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

information or information indicating disabilities or specific illnesses to be 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). Accordingly, the department must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy.

Next, we address your argument 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.” 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 08-23141, 08-23157, and 09-4947 are related to open and pending criminal cases. Based on your representation and our review, we conclude release of the information 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). Thus, we find section 552.108(a)(1) is applicable to report numbers 08-23141, 08-23157, and 09-4947.

We note, 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). 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. Therefore, the department 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 department may withhold report numbers 08-23141, 08-23157, and 09-4947 under section 552.108(a)(1) of the Government Code.³

Finally, we address your argument under section 552.130 of the Government Code for the remaining information. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. Therefore, the department must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, pursuant to section 552.130 of the Government Code.

³As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

In summary, the department must withhold report numbers 08-11571 and 08-4842 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the originating telephone numbers and addresses of the 9-1-1 callers, which we have marked, were supplied by a 9-1-1 service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold report numbers 08-23141, 08-23157, and 09-4947 under section 552.108 of the Government Code. The department must withhold the marked Texas motor vehicle record information pursuant to section 552.130 of the Government Code. The remaining information must be released.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 345706

Enc. Submitted documents

cc: Requestor
(w/o enclosures)