



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

Ms. LeAnn M. Quinn, TRMC
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-15110

Dear Ms. Quinn:

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# 359212 (Ref #09-295).

The City of Cedar Park (the "city") received a request for all call sheets and police reports concerning a specified apartment complex during a specified time period. You state that the city has released some of the requested information. You also state that you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that some of the submitted information is 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 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, which provides in pertinent part as follows:

¹Section 552.147(b) of the Government Code 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.

(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 Subchapters B, D, and E.

Fam. Code § 58.007(c). We find that incident report number 0906-0254 and call sheet number 0906-3584 involve juvenile delinquent conduct or conduct in need of supervision, so as to fall within the scope of section 58.007(c). *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of the Family Code); *see also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Thus, we agree that incident report number 0906-0254 and call sheet number 0906-3584 are confidential and must be withheld in their entireties under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.² You also claim that call sheet numbers 0906-2600 and 0907-1311 are confidential under section 58.007. However, these call sheets do not involve juvenile delinquent conduct or conduct in need of supervision. Therefore, the city may not withhold call sheet numbers 0906-2600 and 0907-1311 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

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

- (a) [T]he following information is confidential, is not subject to public release under [the Act] 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:

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

- (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). You claim that incident report numbers 0907-0428 and 0907-0432 were used or developed in investigations of alleged injuries to children. Upon review, we agree that these incident reports were used or developed in investigations under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *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 do not inform us whether the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given this assumption, we conclude the city must withhold incident report numbers 0907-0428 and 0907-0432 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered intimate or 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.

Upon review, we find that portions of the submitted information are intimate or embarrassing and of no legitimate public interest. Generally, only highly intimate or embarrassing information that implicates the privacy of an individual is withheld. In this instance, however, you copied the requestor on your brief to this office that reveals the nature of the private information at issue. Accordingly, the city must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with

³As our ruling is dispositive of these incident reports, we need not address your remaining arguments against their disclosure.

common-law privacy in order to protect the privacy interests of the individuals at issue. The remaining information you seek to withhold on the basis of common-law privacy is either not highly intimate or embarrassing, it is of legitimate public interest, or it does not identify any particular individual. Therefore none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Next, section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). 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 documentation showing, that incident report numbers 0907-0337, 0907-0086, 0907-0104, 0907-0089, 0907-0048, 0907-0047, 0907-0046, and 0907-0020 relate to pending investigations or prosecutions. Based on your representations and our review, we conclude that release of these incident reports 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state has been released, the city may withhold incident report numbers 0907-0337, 0907-0086, 0907-0104, 0907-0089, 0907-0048, 0907-0047, 0907-0046, and 0907-0020 under section 552.108(a)(1) of the Government Code.⁴

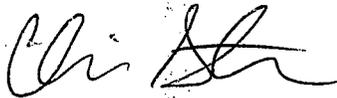
In summary, (1) the city must withhold incident report number 0906-0254 and call sheet number 0906-3584 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (2) the city must withhold incident report numbers 0907-0428 and 0907-0432 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (3) the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) with the exception of basic information, the city may withhold incident report numbers 0907-0337, 0907-0086, 0907-0104, 0907-0089, 0907-0048, 0907-0047, 0907-0046, and 0907-0020 under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.

⁴As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 359212

Enc. Submitted documents

c: Requestor
(w/o enclosures)