



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2011

Captain Greg Minton  
Leander Police Department  
705 Leander Drive  
Leander, Texas 78641

OR2011-06269

Dear Captain Minton:

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# 416755.

The Leander Police Department (the "department") received a request for "[t]he basic information that ordinarily appears on the first page of an offense report for all Incident Detail Reports generated from calls for service" during a specified time period. You state you have made some of the requested information available to the requestor. You state you have redacted Texas motor vehicle record information under section 552.130 of the Government Code and credit card numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You also state you have redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>2</sup> Additionally, you state you advised the requestor of certain redactions made pursuant to section 552.1175(h) of the Government Code. We note, however, section 552.1175(h) pertains only to notifying a requestor of redacting information pursuant to sections 552.1175(b) and 552.1175(f) of the

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<sup>1</sup>Open Records Decision No. 684 is a previous determination issued by this office to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's licence and license plate numbers under section 552.130 of the Government Code and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>Section 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.

Government Code, not to redacting information under other exceptions in the Act. 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, we note some of the submitted information is not responsive to the request. The requestor seeks "[t]he basic information" for the incident reports at issue.<sup>3</sup> Thus, any information outside the scope of basic information is not responsive to the request. This ruling does not address the public availability of that information, and the department need not release any non-responsive information.

Next, we note you have redacted information from the submitted documents that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). As we are able in this instance to ascertain the nature of the information you have redacted, we will determine whether it is excepted from public disclosure. In the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 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;

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<sup>3</sup>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).

(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). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find incident report numbers LPD110202, LPD110177, LPD110191, LPD110198, LPD110205, LPD110207, and, LPD110195 involve allegations of juveniles engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to these reports. Therefore, the responsive information in these reports is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>4</sup> We note, however, the remaining incident reports you seek to withhold under section 58.007 do not involve allegations of juveniles engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Therefore, the department may not withhold any of the remaining responsive information on the basis of 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(a) of the Family Code, which provides in pertinent part:

(a) Except as provided by Section 261.203, 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

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

*Id.* § 261.201(a). We note incident report number LPD110194 pertains to an investigation of alleged child abuse. *See id.* § 261.201(1)(E) (definition of child abuse includes sexual assault under Penal Code section 21.011); *see also* Penal Code § 21.011(c)(1) (defining “child” for purposes of section 21.011 as a minor younger than 17 years of age). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Accordingly, we find the department must withhold the responsive information in incident report number LPD110194 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>5</sup>

Section 552.101 also incorporates 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 satisfied. *Id.* at 681-82. 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. As previously noted, the requestor only seeks basic information. We note basic information does not include the identity of a victim or witness. *See* Open Records Decision No. 127. Upon review, we find that no portion of the responsive information is highly intimate or embarrassing and not of legitimate public interest. Thus, none of the responsive information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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 section 552.108 is applicable to the remaining responsive information. However, as previously noted, the requestor seeks access to only “[t]he basic information” from the reports. 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

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

to the basic front-page information held to be public in *Houston Chronicle*. 531 S.W.2d 177. Basic information includes, but is not limited to, an identification of the complainant; the vehicles, property and premises involved; the location of the crime; a detailed description of the offense; and the names of the arresting and investigating officers. ORD 127 at 4-5 (1976). Consequently, the department may not withhold any of the remaining responsive information under section 552.108(a)(1).

In summary, the department must withhold the responsive information in report numbers LPD110202, LPD110177, LPD110191, LPD110198, LPD110205, LPD110207, and, LPD110195 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the responsive information incident report number LPD110194 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must release the basic information from report numbers LPD110206 and LPD110176.

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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

Ref: ID# 416755

Enc. Submitted documents

c: Requestor  
(w/o enclosures)