



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2012

Mr. Christopher Gregg
Gregg & Gregg, P.C.
16055 Space Center Blvd., Suite 150
Houston, Texas 77062

OR2012-04664

Dear Mr. Gregg:

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# 449355.

The City of Webster and the Webster Police Department (collectively the "city"), which you represent, each received a request for all records related to a specific fire investigation. You claim 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.

Initially, we note most of the submitted information was the subject of a previous request for a ruling by the city, in response to which this office issued Open Records Letter No. 2011-02647 (2011). In that decision, we ruled that a portion of the information at issue was not responsive, but with the exception of basic information, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code. You indicate there has been no change in the law, facts, and circumstances on which the prior ruling was based. We therefore conclude the city may rely on Open Records Letter No. 2011-02647 as a previous determination and release or withhold the information at issue, which we have marked, in accordance with the prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not

excepted from disclosure). We will address your arguments against the release of information not encompassed by Open Records Letter No. 2011-02467.

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 made confidential by other statutes, such as section 58.007 of the Family Code, which protects the law enforcement records of juveniles. 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;

(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 at the time the conduct occurred. *See id.* § 51.02(2). Juvenile law enforcement records relating to juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007(c) applies only to information that relates to a juvenile as a suspect or offender, not as a complainant, victim, witness, or other involved party. Upon review, we find none of the information at issue pertains to a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007. Thus, we conclude the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Based on your comments, we understand the requested records pertain to an ongoing criminal investigation. Based on these representations and our review, we conclude release of information we have marked would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is applicable to the information we have marked. However, the remaining information is administrative in nature and you have not demonstrated how release of this administrative information would interfere with the detection, investigation, or prosecution of a crime. Thus, the administrative information may not be withheld under section 552.108 of the Government Code.

We note, 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*. *See* 531 S.W.2d 177 at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code.¹

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a).² We note section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a

¹As our ruling with regard to this information is dispositive, we do not address your remaining argument against its disclosure under section 552.130 of the Government Code.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, to the extent the employee at issue made a timely request for confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the city may only withhold the marked cellular telephone number if it is a personal cellular telephone number and the cellular service was paid for with personal funds. If the employee did not timely elect confidentiality for the marked information, the city may not withhold the marked information under section 552.117(a)(1) of the Government Code.

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). Gov’t Code § 552.137(a)-(c). The remaining information contains e-mail addresses of members of the public. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, to the extent the responsive information is identical to the information previously requested and ruled upon by this office in the prior ruling, the city may continue to rely on that ruling as a previous determination and withhold or release the responsive information in accordance with Open Records Letter No. 2011-02647. To the extent the responsive information is not encompassed by Open Records Letter No. 2011-02647, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code, but must release basic information. The city must withhold the information we have marked under section 552.117(a)(1) if the employee to whom the information relates timely requested confidentiality of such information. However, the city may only withhold the cellular telephone number we have marked if it is a personal cellular telephone number and the cellular service was paid for with personal funds. If the employee did not timely elect confidentiality for the marked information, the city may not withhold the marked information under section 552.117(a)(1) of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Jessica Marsh". The signature is written in a cursive style with a large initial "J".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/som

Ref: ID# 449355

Enc. Submitted documents

c: Requestor
(w/o enclosures)