



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2013

Ms. Cheryl K. Byles
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd floor
Fort Worth, Texas 76102

OR2013-03751

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# 481595 (CFW PIR No. W022627).

The City of Fort Worth (the "city") received a request for all records showing when police were sent to the requestor's address. You state the city is releasing some of the requested information to the requestor. You inform us the city will redact portions of the submitted information relating to a 9-1-1 caller pursuant to Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011).¹ You claim some of 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.

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,

¹Open Records Letter Nos. 2011-15641 and 2011-15956 are previous determinations issued to the city authorizing the city to withhold the originating telephone numbers and addresses, respectively, of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, without requesting a decision from this office. See Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

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 inform us, and submit an affidavit from a detective with the city’s police department affirming, the information you have marked under section 552.108 pertains to a pending criminal investigation. Based on these representations and our review, we conclude the release of the marked information 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the information at issue.

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). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

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 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 demonstrated. *Id.* at 681-82. The types 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. You have marked the information you claim is protected by common-law privacy. Upon review, we agree this information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must generally withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the requestor may be the authorized representative of the individual to which the marked information pertains. Section 552.023 of the Government Code states a person or a person’s authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person’s privacy interest. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person’s authorized representative on grounds that information is considered confidential by privacy principles). Accordingly, if the requestor is the authorized representative of the individual at issue, then, pursuant to

section 552.023, none of the information you have marked under common-law privacy may be withheld under section 552.101 on that basis. If the requestor is not the authorized representative of this individual, the city must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. If the requestor is the authorized representative of the individual at issue, then none of the information you have marked under common-law privacy may be withheld under section 552.101 of the Government Code on that basis. Otherwise, the city must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. 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, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 481595

Enc. Submitted documents

c: Requestor
(w/o enclosures)