



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2013

Ms. Margaret Ward
Attorney for the City of Burkburnett
Shotts, Treviño & Guevara, L.L.P.
2237 Hillside Drive
San Angelo, Texas 76904

OR2013-04169

Dear Ms. Ward:

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# 481151.

The City of Burkburnett (the "city"), which you represent, received a request for the report and any other information pertaining to an arrest of the requestor on a specified date. You claim portions of the submitted information are 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, 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* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending prosecution. Based on your representation and our review, we conclude the release of the information you have marked in the submitted documents and the video recording 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559

(Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information you have marked in the submitted documents and the video recording.

Section 552.108, however, 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. The city 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*). We note you have marked the entire narrative portion of the responsive report for withholding. The remaining information in the responsive report does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released. Accordingly, the city must release sufficient portions of the responsive report to encompass basic information as described by *Houston Chronicle*. See 531 S.W.2d at 186-88; see also ORD 127. Thus, with the exception of basic information, the city may withhold the information you have marked and the video recording under section 552.108(a)(1) of the Government Code.

Next, you claim section 58.007 of the Family Code for portions of the narrative. 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. Section 552.101 encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Section 58.007 provides, in pertinent part, 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.

Id. § 58.007(c). 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(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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). You contend the information you have marked is subject to section 58.007. We note, however, the submitted information pertains to an investigation of an adult suspect. Thus, we find you have failed to establish how the information at issue constitutes a juvenile law enforcement record subject to section 58.007(c) of the Family Code. Accordingly, the city may not withhold the information you have marked under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Section 552.101 encompasses common law privacy. The doctrine of common-law privacy protects information (1) containing 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 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. This office has also found common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). Upon review, we find portions of the narrative are highly intimate or embarrassing and not of legitimate public concern. Therefore, in releasing basic information, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold the information you have marked in the submitted documents and the video recording under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹

¹We note some of the information being released in this instance contains the requestor’s driver’s license information, which is generally confidential under section 552.130(a)(1) of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a special right of access to his information under section 552.023 of the Government Code. *See generally* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party’s representative, solely on grounds that information is considered confidential by privacy principles). We note section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) and (a)(3) without the necessity of requesting a decision under the Act. *See id.* § 552.130(c). *But see id.* § 552.130(d)-(e). Thus, if the city receives another request for this information from a person who does not have such a right of access, section 552.130(c) authorizes the city to redact the requestor’s driver’s license.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 481151

Enc. Submitted documents

c: Requestor
(w/o enclosures)