



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2013

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-08817

Dear Ms. Kretz:

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# 488465 (City of Fort Worth PIR No. W024232).

The City of Fort Worth (the "city") received a request for records pertaining to two named individuals. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.151 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information, some of which you state is a representative sample.²

Initially, you inform us some of the information in Exhibit C2 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. (2012). In Open Records Letter No. 2012-11738, we determined the city may withhold the information at issue under section 552.108(a)(1) of the Government Code. You state the law, facts, and circumstances on which the prior ruling was based have not changed.

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this section based on your markings in the submitted documents.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Accordingly, we conclude the city may rely on Open Records Letter No. 2012-11738 as a previous determination and withhold the identical information in accordance with that 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 information is or is not excepted from disclosure). We will address your arguments for the remaining information not encompassed by the previous ruling.

Section 552.108(a)(1) 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 have provided an affidavit from the Tarrant County District Attorney’s office stating the information in Exhibit C2 pertains to pending criminal prosecutions, and its release would interfere with the investigation and prosecution of these cases. Based upon these representations, we agree section 552.108(a)(1) of the Government Code is applicable to the remaining information in Exhibit C2. *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).

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 offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the city may withhold the remaining information in Exhibit C2 under section 552.108(a)(1).

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 protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

- (a) [T]he 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 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 state Exhibits C1 and C3 were used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261.201). As you have not indicated the city’s police department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Accordingly, we agree Exhibits C1 and C3 are confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.³

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in relevant part:

(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). You contend the information in Exhibit C4 is confidential under section 58.007(c) of the Family Code. Section 58.007(c) is applicable to records of juvenile conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” for purposes of

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 58.007(c) of Family Code). The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of section 58.007(c) of Family Code). Upon review, we agree the information in Exhibit C4 involves juvenile conduct indicating a need for supervision that occurred after September 1, 1997. It does not appear any of the exceptions to confidentiality under section 58.007 apply to the information at issue. Accordingly, the city must withhold Exhibit C4 under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. *See id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find none of the information you seek to withhold under common-law privacy is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city may not withhold any of the information you have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s license, driver’s license, or personal identification document issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1), (3). Upon review, we find portions of the remaining information in Exhibit C5 consist of motor vehicle record information. Accordingly, the city must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the city may rely on Open Records Letter No. 2012-11738 as a previous determination and withhold the identical information in Exhibit C2 in accordance with that ruling. With the exception of the basic information, the city may withhold the remaining information in Exhibit C2 under section 552.108(a)(1) of the Government Code. The city must withhold Exhibits C1 and C3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold Exhibit C4 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Finally, the city must withhold the information it has marked, and the

additional information we have marked in Exhibit C5, under section 552.130 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 cursive script that reads "Kathleen J. Santos".

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/bhf

Ref: ID# 488465

Enc. Submitted documents

c: Requestor
(w/o enclosures)