



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2013

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2013-13336

Dear Mr. Hernandez:

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# 495109 (Edinburg Reference ID #50236).

The Edinburg Police Department (the "department") received a request for all reports pertaining to a specified address from January 1, 2010 to February 1, 2013. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Subsection 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Subsection 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or

representative samples if the information is voluminous. *See id.* § 552.301(e)(1). You state the department received the request for information on April 30, 2013. You further state that the department informed the requestor it needed ten additional days to collect the information due to the voluminous nature of the request. However, the deadlines contained in section 552.301 are fixed by statute and cannot be altered by agreement. *See* Open Records Decision No. 541 at 3 (1990) (“[T]he obligations of a governmental body under the [predecessor to the Act] cannot be compromised simply by its decision to enter into a contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 514 (1988).”); *but see* Gov’t Code § 552.221(d) (allowing a governmental body that does not seek to withhold responsive information from disclosure to negotiate with the requestor the date and hour the information will be made available). Accordingly, the department’s deadlines were May 14, 2013 and May 21, 2013 respectively. We note the envelope in which the department requested a ruling from our office and submitted the information at issue was postmarked May 24, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 of the Government Code results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the need of a governmental body, other than the one that has failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). Because the Hidalgo County District Attorney’s Office (the “district attorney’s office”) objects to the release of offense report number 2011-00042835, we will consider whether the department may withhold it under section 552.108 on behalf of the district attorney’s office. Further, sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of sections 552.101 and 552.130 to the submitted information.

Section 552.108 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney’s office has provided a letter explaining that offense report number 2011-00042835 is related to multiple pending criminal prosecutions. Further, the district attorney’s office states that release of this report would interfere with the pending criminal prosecutions. Based on these representations and our review, we conclude the release of offense report number 2011-00042835 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). Thus, we find section 552.108 is applicable to offense report number 2011-00042835.

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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic offense and arrest information, even if the information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, the department may withhold offense report number 2011-00042835 on behalf of the district attorney’s office 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 information protected by other statutes, such as 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.

Fam. Code § 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(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find offense report number 2012-00001283 involves a child allegedly 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 this information. Therefore, the department must withhold offense report number 2012-00001283 in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

[T]he following information is confidential, is not subject to public release under [the Act], 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 assert offense report number 2011-00011875 is confidential under section 261.201(a). Upon review, we find the information at issue was used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* §§ 101.003 (defining “child” for purposes of Fam. Code title 5), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we find offense report number 2011-00011875 is confidential and must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the

Family Code.¹ See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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 established. *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. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. See ORDs 393, 339; see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld). Based on your markings, we understand you to argue that offense report number 10-41046 should be withheld in its entirety under section 552.101 in conjunction with common-law privacy, because the report pertains to an attempted sexual assault. Upon review, we find you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of offense report number 10-41046 under section 552.101 in conjunction with common-law privacy. However, the department must withhold the identifying information of the victim we have marked in offense report number 10-41046 under section 552.101 in conjunction with common-law privacy.

We also note that 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Common-law privacy further encompasses certain types of personal financial information. See Open Records Decision Nos. 545 (1990), 523 (1989); see also Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs are protected under common-law privacy). Upon review, we find the information we have marked in the remaining documents under section 552.101 in conjunction with common-law privacy is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, and personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the department must withhold the information you have marked, and we have marked, under section 552.130.²

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). The department may withhold the social security numbers you have marked, and we have marked, under section 552.147 of the Government Code.³

In summary, with the exception of basic information, the department may withhold offense report number 2011-00042835 on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code. The department must withhold offense report number 2012-00001283 in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. The department must withhold offense report number 2011-00011875 in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold the identifying information of the victim we have marked in offense report number 10-41046 under section 552.101 in conjunction with common-law privacy. The department must withhold the remaining information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked, and we have marked, under section 552.130 of the Government Code. The department may withhold the social security numbers you have marked, and we have marked, under section 552.147 of the Government Code. The remaining information must be released.

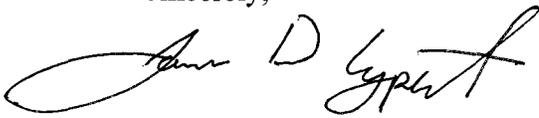
²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

³We note 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.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Cypert". The signature is fluid and cursive, with a large initial "J" and "D".

James D. Cypert
Assistant Attorney General
Open Records Division

JDC/tch

Ref: ID# 495109

Enc. Submitted documents

c: Requestor
(w/o enclosures)