



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2014

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Thockmorton Street, Third Floor
Fort Worth, Texas 76102

OR2014-16345

Dear Mr. Trevino:

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# 536142 (PIR No. W035209).

The Fort Worth Police Department (the "department") received a request for all 9-1-1 calls regarding a specified address. You state the department is releasing some information. You indicate the department will redact some information pursuant to the previous determination in Open Records Letter No. 2014-05072 (2014).¹ You state you will redact information pursuant to the previous determinations in Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011).² You also state you will redact motor vehicle record information

¹Open Records Letter No. 2014-05072 is a previous determination authorizing the withholding, under section 552.101 of the Government Code in conjunction with common-law privacy, a driver's license organ donor election of a living person without the necessity of requesting an attorney general decision.

²Open Records Letter No. 2011-15641 is a previous determination authorizing the withholding, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, of an originating telephone number of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision. Additionally, Open Records Letter No. 2011-15956 is a previous determination authorizing the withholding, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, of an originating address of a 9-1-1 caller furnished by a service supplier established in accordance with

under section 552.130(c) of the Government Code, social security numbers under section 552.147(b) of the Government Code, and FBI numbers as permitted by Open Records Letter No. 2013-22304 (2013).³ You claim the submitted information is excepted from disclosure under sections 552.101 and 522.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides, in relevant 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.

...

chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision.

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* 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 id.* § 552.130(d), (e). 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. *See id.* § 552.147(b). Open Records Letter No. 2013-22304 is a previous determination issued to the department authorizing the department to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law without requesting a ruling from this office.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act] or other law.

Id. § 58.007(c), (e), (j)(2). *See also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and younger than seventeen years of age at the time of the reported conduct). Upon review, we find Exhibit C-2 involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code title 3). Thus, this information is generally confidential under section 58.007(c). In this instance, the requestor may be a parent or guardian of the juvenile offender at issue. Therefore, we must rule conditionally. If the requestor is not a parent or guardian of the juvenile offender at issue, the department must withhold Exhibit C-2 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is a parent or guardian of the juvenile offender, then the requestor has a right to inspect information concerning her child under section 58.007(e), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will consider whether the information in Exhibit C-2 is otherwise excepted under the Act.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical

information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find portions of Exhibit C-2 meet the standard articulated by the Texas supreme court in *Industrial Foundation*. However, as previously noted, the requestor may be a parent or guardian of the juvenile whose information is at issue and may have a right of access to the juvenile's information pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, to the extent the requestor is a parent or guardian of the juvenile at issue, she has a right of access to information pertaining to the juvenile pursuant to section 552.023 of the Government Code, and it may not be withheld from him pursuant to common-law privacy. Further, the department has failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the remaining information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

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(a)(1) 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 state, and provide an affidavit from the Tarrant County District Attorney's Office asserting, Exhibit C-1 pertains to an ongoing criminal investigation and prosecution. Based on your representation, we conclude the release of the information at issue 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, section 552.108(a)(1) of the Government Code is applicable to Exhibit C-1.

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). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 186-87. See also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, which must be released, the department may withhold Exhibit C-1 under section 552.108(a)(1) of the Government Code.

In summary, if the department determines the requestor is not a parent or guardian of the juvenile offender at issue in Exhibit C-2, the department must withhold Exhibit C-2 in its

entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. If the department determines the requestor is a parent or guardian of the juvenile offender at issue, the department must release Exhibit C-2 to her. With the exception of basic information, the department may withhold Exhibit C-1 under section 552.108(a)(1) of the Government Code.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 536142

Enc. Submitted documents

c: Requestor
(w/o enclosures)