



January 14, 2015

Ms. Lauren F. Crawford
First Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805-1000

OR2015-00777

Dear Ms. Crawford:

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# 549984.

The City of Bryan (the "city") received a request for police report number 14-0800748 and all dispatch call notes for a specified address during a particular time period. You state the city will release some of the requested information, including report number 14-0800748. 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, 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 the information submitted in Exhibit C pertains to an active criminal investigation. Based on your representation, we find the city has demonstrated 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) is applicable to Exhibit C.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

We understand the information in Exhibit D relates to a concluded investigation which you state did not result in a conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to Exhibit D.

However, we note 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*, and includes, among other items, the identity of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code and Exhibit D under section 552.108(a)(2) 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 261.201 of the Family Code. Section 261.201 provides as follows:

(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). Upon review, we find event report number 140910045 consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. As you do not indicate the city has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the city must withhold event report number 140910045 under section 552.101 of the Government Code 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 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.

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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. However, we note the requestor has a right of access pursuant to section 552.023 to information pertaining to herself. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s representative on grounds information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the information in event report numbers 141660116 and 14166117. Therefore, withholding only the individual’s identity or certain details of the incident from the requestor would not preserve the subject individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold event report numbers 141660116 and 14166117 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy.

¹As we reach this conclusion, we do not address your remaining claim for this information.

Upon further review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information you have highlighted is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990). We note the informer's privilege does not apply if the subject of the complaint knows the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978).

You state some of the submitted information reveals the identities of individuals who called the city's 9-1-1 dispatch service to report possible violations of law. You state that such violations carry criminal penalties. You do not indicate, nor does it appear, the subject of the complaints knows the identities of the complainants.

Based upon your representations and our review, we conclude the city may withhold the identifying information of the complainants in the basic information in Exhibit D and the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have not demonstrated how any of the remaining information at issue identifies an individual who made a report of a violation of any criminal or civil law for the purposes of the informer's privilege. Thus, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with the informer's privilege.

In summary, except for the basic information, the city may withhold Exhibit C under section 552.108(a)(1) of the Government Code and Exhibit D under section 552.108(a)(2) of the Government Code. The city must withhold event report number 140910045 under

section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold event report numbers 141660116 and 14166117 and the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the identifying information of the complainants in the basic information in Exhibit D and the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 549984

Enc. Submitted documents

c: Requestor
(w/o enclosures)