



February 10, 2015

Ms. Erin A. Higginbotham
Counsel for the City of Copperas Cove
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2500 West William Cannon, Suite 609
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OR2015-02564

Dear Ms. Higginbotham:

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# 555091 (Ref. No. W002428-111314).

The City of Copperas Cove (the "city"), which you represent, received a request for police reports for a specified date.¹ The city states it will release some of the requested information upon the requestor's response to a cost estimate. The city states it will withhold motor vehicle record information under section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim portions of the submitted information are excepted from disclosure under

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 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* 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 requesting a decision from this office under the Act. *Id.* § 552.147(b).

sections 552.101, 552.108, and 552.136 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 public 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. Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 reads 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. 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 at the time of the reported conduct. *See id.* § 51.02(2). Some of the submitted information involves juvenile delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). Thus, this information is subject to section 58.007(c). In this instance, it does not appear any of the exceptions to confidentiality under section 58.007 apply. Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides, in part, as follows:

³As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

(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 the information you marked was used or developed in an investigation of alleged or suspected child abuse by the city's police department under chapter 261 of the Family Code. *See id.* § 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). As you do not indicate the city's police department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 550.065 of the Transportation Code. Section 550.065 provides in relevant part as follows:

(a) This section applies only to information that is held by the [Texas Department of Transportation (the "department")]⁴ or another governmental entity and relates to a motor vehicle accident reported under this chapter or Section 601.004 [of the Transportation Code], including accident report information compiled under Section 201.805 [of the Transportation Code][.]⁵

(b) Except as provided by Subsection (c) or (e), the information is privileged and for the confidential use of:

(1) the department; and

⁴Transp. Code § 550.0601 ("department" means the Texas Department of Transportation).

⁵We note the 81st Legislature renumbered section 201.805 to section 201.806 of the Transportation Code. Act of May 20, 2009, 81st Leg., ch. 87, § 27.001(90), 2009 Tex. Gen. Laws 208, 381.

(2) an agency of the United States, this state, or a local government of this state that has use for the information for accident prevention purposes.

(c) On written request and payment of any required fee, the department or the governmental entity shall release the information to:

...

(4) a person who provides the department or governmental entity with two or more of the following:

(A) the date of the accident;

(B) the specific address or the highway or street where the accident occurred; or

(C) the name of any person involved in the accident.

...

(e) In addition to the information required to be released under Subsection (c), the department may release:

(1) information relating to motor vehicle accidents that the department compiles under Section 201.805, as added by Chapter 1407 (S.B. 766), Acts of the 80th Legislature, Regular Session, 2007[.]⁶

...

(f) The department:

(1) may not release under Subsection (e) information that:

...

(B) would allow a person to satisfy the requirements of Subsection (c)(4) for the

Id.

⁶As previously noted, this section has been renumbered to section 201.806 of the Transportation Code.

release of information for a specific motor
vehicle accident[.]

Transp. Code § 550.065(a)-(c), (e)-(f) (footnotes added). You claim the submitted CR-3 accident report forms have been completed pursuant to chapter 550 of the Transportation Code are confidential under section 550.065 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Under section 550.065(c)(4), the department or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, you state the requestor has not provided the city with two of the three pieces of information specified by the statute. Based on your representation, we agree the city must withhold the submitted CR-3 accident report forms, which we have marked, from public disclosure under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

You also seek to withhold the submitted accident case reports under section 550.065(f) of the Transportation Code. You state release of the information at issue would allow a person to satisfy the requirements of section 550.065(c)(4) as prohibited by section 550.065(f)(1)(B). Section 550.065(f) refers to the information addressed in section 550.065(e), which is the information in the database referred to as the Crash Records Information System ("CRIS"). *See id.* § 550.065(e), (f); *see also* Senate Comm. on Transportation and Homeland Security, Bill Analysis, Tex. S.B. 375, 81st Leg., R.S. (2009). The department, not the city, maintains CRIS as required by section 201.806 of the Transportation Code. *See* Transp. Code § 201.806. Thus, section 550.065(f)(1)(B) addresses only the department and applies only to the department. Consequently, the city's accident case reports are not made confidential by section 550.065(f)(1)(B). Thus, the city may not withhold the remaining information at issue under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses 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 demonstrated. *See 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of a particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983). 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 the information we marked satisfies the standard articulated by the Texas Supreme

Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information at issue is highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Gov’t Code § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); *see also Ex parte Pruitt*, 551 S.W.2d 706; Open Records Decision Nos. 562 at 10 (1990), 531 at 2. This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information at issue contains records of inquiries made via the Texas Law Enforcement Telecommunications System (“TLETS”). You argue release of the information “could give a criminal sufficient warning to evade detection and/or prosecution.” You state the city may perform a records check before “an individual is officially or openly identified as a suspect in a case and before the individual has even been contacted by police.” You argue individuals engaged in illegal conduct could find out whether the city has run checks on them and could “gain valuable knowledge in terms of concealing [their] activities from law enforcement scrutiny.” We note the information at issue consists of driver’s license inquiries, license plate inquiries, and warrant checks by the city’s police department. Upon review, we find you have not demonstrated how the release of any of the information at issue would interfere with law enforcement or crime prevention. Accordingly, the city may not

withhold any of the remaining information at issue under section 552.108(b)(1) of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the city must withhold the information you marked and the additional information we marked under section 552.136 of the Government Code.

In summary, the city must withhold (1) the information you marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, (2) the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (3) the submitted CR-3 accident report forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, (4) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, and (5) the information you marked and the additional information we marked under section 552.136 of the Government Code. 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 555091

Enc. Submitted documents

c: Requestor
(w/o enclosures)