



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 1, 2015

Ms. LeAnn M. Quinn  
City Secretary  
City of Cedar Park  
450 Cypress Creek Road  
Cedar Park, Texas 78613

OR2015-06261

Dear Ms. Quinn:

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# 558275 (Cedar Park Reference No. 15-407).

The City of Cedar Park (the "city") received a request for all records pertaining to a specified address during a specified time period. You state the city will release some information to the requestor. You further state the city will redact motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.137 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

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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 the necessity of requesting a decision from this office. *See id.* § 552.147(b).

Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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.

...

(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 Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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). Upon review, we find report numbers 2014-019895,

2014-034116, 1406-0019, 2014-034166, 2014-045894, 2014-070852, 1411-0069, 2014-073913, 2014-074151, and 1411-0286 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Thus, this information is generally confidential under section 58.007(c). In this instance, the requestor is a parent of the juvenile offenders at issue in these reports. Accordingly, this information 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). We note section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted from reports a parent has a right of access to pursuant to section 58.007(e). *See id.* § 58.007(j)(2). Accordingly, we will consider your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code. Section 261.201 provides, in relevant part, 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

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

*Id.* § 261.201(a), (k), (l)(2). Upon review, we find report numbers 1204-2505, 1204-0191, 2014-028313, and 2014-034684 consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in investigations under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section). Thus, we find these reports are generally confidential under section 261.201 of the Family Code. We note the requestor is a parent of the alleged child victims in these reports. Further, the requestor is not alleged to have committed the suspected abuse. Therefore, the city may not use section 261.201(a) to withhold these reports from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure from information a requestor has a right of access to pursuant to section 261.201(k). *Id.* § 261.201(l)(2). Accordingly, we will consider your arguments against disclosure of this 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 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 in Exhibit D pertains to a pending case. 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) is applicable to Exhibit D.

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). You state the information in Exhibit C relates to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representations, we conclude section 552.108(a)(2) is applicable to Exhibit C.

However, section 552.108 does not except from disclosure basic information about a crime. *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code. *See id.* Thus, with the exception of basic information, the city may withhold Exhibit D under section 552.108(a)(1) of the Government Code and Exhibit C under section 552.108(a)(2) of the Government Code.<sup>2</sup>

You assert portions of the basic information and the information you marked in Exhibit B are protected under common-law privacy. 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 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 you marked, and the additional information we marked, meet the standard articulated by the Texas Supreme court in *Industrial Foundation*. However, we note the requestor is the parent of the minor child whose privacy interests are at issue in report number 2014-062485, and the requestor has a right of access to that information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the city may not withhold the information at issue in report number 2014-062485, which we marked for release, from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the remaining information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175(b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision 506 at 5-6 (1988). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). We have marked a cellular telephone number pertaining to a peace officer not held in an employment capacity that may be subject to section 552.1175. Accordingly, if the individual at issue elects to restrict access to information pertaining to him in accordance with section 552.1175(b), the city must withhold the cellular telephone number we marked only if a governmental body does not pay for the cellular telephone service. If the individual does not elect to restrict access to information pertaining to him in accordance with section 552.1175(b) or a governmental body pays for the cellular telephone service, the city may not withhold the cellular telephone number under section 552.1175 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address you have marked is not of a type excluded by subsection (c). Accordingly, the city must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release.

In summary, with the exception of basic information, the city may withhold Exhibit D under section 552.108(a)(1) of the Government Code and Exhibit C under section 552.108(a)(2) of the Government Code. Except for the information we marked for release, the city must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual at issue elects to restrict access to information pertaining to him in accordance with section 552.1175(b), the city must withhold the cellular telephone number we marked only if a governmental body does not pay for the cellular telephone service. The city must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. The city must release the remaining information.<sup>3</sup>

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<sup>3</sup>Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the city must again seek a decision from this office if it receives a request for this information from a different requestor.

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](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,



Lauren Dahlstein  
Assistant Attorney General  
Open Records Division

LMD/som

Ref: ID# 558275

Enc. Submitted documents

c: Requestor  
(w/o enclosures)