



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2015

Ms. Jana Lewellen
City Clerk
City of Belton
P.O. Box 120
Belton, Texas 76513

OR2015-09200

Dear Ms. Lewellen:

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# 563438.

The City of Belton (the "city") received a request for (1) all police incident reports, including reports of assault, pertaining to a named individual; (2) all reports of assault pertaining to a specified address; and (3) all information pertaining to a specified case. You indicate you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information, a portion of which constitutes a representative sample.¹

Initially, we note the city has redacted portions of the submitted information, including addresses, dates of birth, and phone numbers. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [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). Upon review, we find report numbers 04001387, 06000725, 08001938, 08001995, 09000430, 13000725, 14000269, 14001781, 14002395, 14002483, 14003232, 14004265, 14004285, 15000006, 15000132, 15000349, and 15000528 were used or developed in investigations of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining "child" for purposes of this section 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), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold report numbers 04001387, 06000725, 08001938, 08001995, 09000430, 13000725, 14000269, 14001781, 14002395, 14002483, 14003232, 14004265, 14004285, 15000006, 15000132, 15000349, and 15000528 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Family Code.³ We note basic information must not be released when a report is confidential under section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. *Id.* § 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). Report numbers 06002308, 09001911, CI13001477, 13001885, 14002368, 14002452 and 14002864 involve 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 report numbers 06002308, 09001911, CI13001477, 13001885, 14002368, 14002452 and 14002864 in their entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code.⁴ We note basic information must not be released when a report is confidential under section 58.007 of the Family Code.

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

⁴As our ruling is dispositive, we need not address your remaining argument 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(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 report numbers CI13000138, CI13000773, CI13001447, 14000392, 144002297, 15000065, and 15000554 relate to pending criminal investigations. Based on your representation and our review, we find 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 report numbers CI13000138, CI13000773, CI13001447, 14000392, 144002297, 15000065, and 15000554.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 14002950 pertains to a closed case that did not result in a conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to report number 14002950.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or 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 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity of the reporting party. *See* ORD 127 at 3-4. However, the basic information does not include the identity of witnesses, other involved parties, or a victim who is not also the complainant. *See id.* Accordingly, with the exception of basic information, the city may withhold report numbers CI13000138, CI13000773, CI13001447, 14000392, 144002297, 15000065, and 15000554 under section 552.108(a)(1) of the Government Code and report number 14002950 under section 552.108(a)(2) of the Government Code.

We note portions of the remaining information, including portions of the basic information, are protected by common-law privacy. 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). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code 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, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. You indicate the city will withhold the motor vehicle record information you marked pursuant to section 552.130(c) of the Government Code.⁵ Upon review, we find additional portions of the submitted information, which we have marked, consist of motor vehicle record information. Accordingly, the city must also withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold report numbers 04001387, 13000725, 14001781, 14002483, 14004265, 14004285, 15000006, 15000132, 15000349, and 15000528 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold report numbers 06002308, 09001911, CI13001477, 13001885, 14002368, 14002452 and 14002864 in their entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, the city may withhold report numbers CI13000138, CI13000773, CI13001447, 14000392, 144002297, 15000065, and 15000554 under section 552.108(a)(1) of the Government Code and report number 14002950 under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you marked and the additional information we have marked under section 552.130 of the Government Code. The city must release the remaining information.

⁵Section 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).

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 'KJM' followed by a stylized surname.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 563438

Enc. Submitted documents

c: Requestor
(w/o enclosures)