



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2015

Mr. Ryan D. Pittman
Counsel for City of Frisco
Abernathy Roeder Boyd & Hullett, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2015-09845

Dear Mr. Pittman:

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# 566372.

The City of Frisco (the "city"), which you represent, received a request for all complaints and police reports related to a specified business, certain specified types of complaints made against two named individuals, and a specified address. You state the city has released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-08206 (2015). In Open Records Letter No. 2015-08206, we determined (1) the city must withhold some of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (2) with the exception of basic information, the city may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, or

¹Although you also raise section 552.023 of the Government Code, we note section 552.023 is not an exception to disclosure under the Act. *See* Gov't Code § 552.023 (person has right of access to information about self that is protected by laws protecting person's privacy interest).

circumstances on which the prior ruling was based have changed. Accordingly, the city must continue to rely on Open Records Letter No. 2015-08206 as a previous determination and withhold or release the identical information in accordance with that ruling.² *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(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 the information we have marked consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of Fam. Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 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 has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Therefore, we conclude the information at issue is confidential under section 261.201(a). Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ However, we find you have failed to demonstrate any of the remaining information was used or developed in an investigation of alleged or suspected child abuse, or consists of a report

²As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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

of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Therefore, the remaining information is not confidential under section 261.201 of the Family Code, and the city may not withhold it under section 552.101 of the Government Code on that basis.

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 remaining information pertains to an ongoing investigation with the city police department. 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 the remaining information.

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*. *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 the remaining information under section 552.108(a)(1) of the Government Code.⁴

You raise section 552.101 of the Government Code in conjunction with common-law privacy for the basic information. Section 552.101 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. However, upon review, we find none of the basic information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the basic information under section 552.101 of the Government Code on this basis.

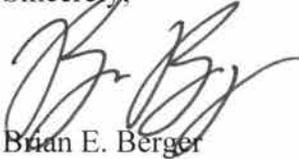
⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the city must continue to rely on Open Records Letter No. 2015-08206 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, which must be released, the city may withhold the remaining information 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 566372

Enc. Submitted documents

c: Requestor
(w/o enclosures)