



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 21, 2015

Ms. Amanda Pell
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2015-09967

Dear Ms. Pell:

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# 564366 (Baytown Public Information Request #4180, #4228, and #4356).

The City of Baytown and the Baytown Police Department (collectively, the "city") received three requests from three requestors for information pertaining to a specified incident. You indicate the city will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the first request because it was created after the city received the first request for information. Therefore, the city need not release information to the first requestor that is not responsive to the first request.

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 58.007 of the Family Code. The relevant language of section 58.007 reads:

(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.

Fam. Code § 58.007(c). You assert the submitted information consists of juvenile law enforcement records subject to section 58.007. Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.*; *see also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age when conduct occurred). Upon review, we find the submitted information does not involve a juvenile as a suspect, offender, or defendant. As such, section 58.007 is not applicable to the submitted information and the city may not withhold it under section 552.101 on this 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: (1) 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 at issue relates to an ongoing criminal investigation and prosecution. Based on this representation and our review, we find release of the information you have marked 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, we find the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.¹

¹As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). However, we note section 552.130 protects personal privacy. In this instance, the second requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). We also note the first requestor represents an insurance provider and may be acting as the authorized representative of the second requestor, who is one of the individuals whose motor vehicle record information is at issue. To the extent the first requestor is acting as the authorized representative of the second requestor, the first requestor has a right of access under section 552.023 to information pertaining to the second requestor that would otherwise be protected under section 552.130. Accordingly, the city must withhold the information you have marked and the information we have marked that pertain to individuals other than the second requestor under section 552.130 of the Government Code. If the first requestor is not the authorized representative of the second requestor, then the city must withhold the second requestor's motor vehicle record information from the first requestor under section 552.130 of the Government Code. The city must withhold all of the marked motor vehicle record information from the third requestor under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us the information you have marked relates to undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the city must withhold the information you have marked in the remaining information under section 552.152 of the Government Code.

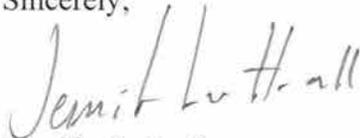
In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the information you have marked and the information we have marked that pertains to individuals other than the second requestor under section 552.130 of the Government Code. If the first requestor is not the authorized representative of the second requestor, then the city must withhold the second requestor's motor vehicle record information from the first requestor under section 552.130

of the Government Code. The city must withhold all of the marked motor vehicle record information from the third requestor under section 552.130 of the Government Code. The city must withhold the information you have marked under section 552.152 of the Government Code. The city must release the remaining information.²

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 564366

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

²We note the remaining information contains social security numbers. 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 under the Act. *See* Gov't Code § 552.147(b).