



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



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June 17, 2015

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Andrew T. McKinney, IV
Counsel for the Cypress Creek EMS
Litchfield Cavo, LLP
One Riverway, Suite 1000
Houston, Texas 77056

OR2015-11978

Dear Mr. McKinney:

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# 567774.

The Cypress Creek EMS (the "CCEMS"), which you represent, received a request for (1) documents detailing the use of CCEMS credits cards during a specified time period, (2) information detailing expense reports or reimbursements from a named individual during a specified time period, and (3) documents detailing expenses of the CCEMS tactical medical team during a specified time period, including offense reports and other documentation showing involvement in law enforcement operations. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. You also state you have notified certain law enforcement agencies of the request for information. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the information you have submitted.

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. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in part, the following:

(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).¹ We note the submitted information consists of various reports documenting the CCEMS's involvement with law enforcement operations. Upon review, we find some of the submitted information was used or developed by a law enforcement agency, the Harris County Constable's Office, Precinct 4 (the "constable's office"), in child abuse investigations. *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), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Thus, we find the information we marked is subject to section 261.201 of the Family Code. Accordingly, the CCEMS must withhold the information we marked under section 552.101 in conjunction with section 261.201.² However, we are unable to determine whether the remaining information was used or developed in investigations of child abuse or neglect for chapter 261 purposes. Thus, we rule conditionally for the remaining information. To the extent the remaining information was used or developed by a law enforcement agency in investigations of child abuse or neglect, the CCEMS must also withhold the remaining information under section 552.101 in conjunction with section 261.201. To the extent the remaining information was not used or developed by a law enforcement agency in child abuse or neglect investigations, the CCEMS may not withhold it under section 552.101 in conjunction with section 261.201. In that instance, we address your argument against disclosure.

Section 552.108 of the Government Code provides, in pertinent part:

¹The Office of the Attorney General will a raise mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 maybe invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state release of the remaining information could jeopardize the law enforcement activities at issue. You state you have notified certain law enforcement agencies with which the CCEMS works. You have provided our office with a statement from the constable's office stating release of its information at issue would interfere with ongoing investigations. Based on this representation, we find release of the information we marked under section 552.108(a)(1) 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). Accordingly, the CCEMS may withhold the information we marked under section 552.108(a)(1). However, we have not received comments from the remaining law enforcement agencies at issue seeking to withhold the remaining information under section 552.108(a)(1) or section 552.108(b)(1). Thus, we find no portion of the remaining information may be withheld under section 552.108(a)(1) or section 552.108(b)(1).

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. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). We note a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the CCEMS must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note section 552.117 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 No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. We have marked the cellular telephone number of a CCEMS employee. Therefore, if the employee at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the CCEMS must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the employee at issue did not timely request confidentiality under section 552.024 or a governmental body pays for the cellular telephone service, the CCEMS may not withhold the marked information under section 552.117(a)(1).

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the CCEMS must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the CCEMS must withhold the information we marked under section 552.101 in conjunction with section 261.201 of the Family Code. To the extent the remaining information was used or developed by a law enforcement agency in child abuse or neglect investigations, the CCEMS must also withhold the remaining information under section 552.101 in conjunction with section 261.201 of the Family Code. To the extent the remaining information was not used or developed in child abuse or neglect investigations, the CCEMS (1) may withhold the information we marked under section 552.108(a)(1), (2) must withhold the information we marked under section 552.101 in conjunction with common-law privacy, (3) must withhold the cellular telephone number we marked under section 552.117(a)(1), if the employee at issue timely elected confidentiality under section 552.024 and a governmental body does not pay for the cellular telephone service, (4) must withhold the information we marked under section 552.130, and (5) 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/som

Ref: ID# 567774

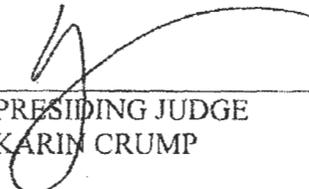
Enc. Submitted documents

c: Requestor
(w/o enclosures)

Summary Judgment. After reviewing the parties' respective motions and responses thereto, the summary judgment evidence and objections thereto, the pleadings on file, the arguments of counsel, and the applicable law, the Court enters the following declarations and orders:

1. IT IS ORDERED that Plaintiff CCEMS' objections to the Affidavit of Chris Feldman and Exhibit E attached thereto are OVERRULED. IT IS FURTHER ORDERED that Plaintiff CCEMS' Motion to Strike Intervenor's Summary Judgment Evidence is DENIED.
2. IT IS ORDERED that Plaintiff CCEMS' Motion for Summary Judgment is GRANTED. IT IS FURTHER ORDERED that Intervenor's Motion for Summary Judgment is DENIED.
3. IT IS ORDERED, ADJUDGED, AND DECLARED that Plaintiff CCEMS is not a governmental body under the Texas Government Code section 552.003(1)(A)(xii) and is not subject to the Texas PIA. Accordingly, CCEMS is not required to release the requested information to the requestor.
4. It is FURTHER ORDERED that all attorney's fees and costs incurred are to be borne by the parties incurring the same.
5. All relief not expressly granted herein is denied.
6. This Final Judgment disposes of all claims between the parties in each of the consolidated cases and is a final and appealable judgment.

SIGNED this 4th day of March, 2016.



PRESIDING JUDGE
KARIN CRUMP