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ATTORNEY GENERAL OF TEXAS

July 27, 2015

Mr. James Kopp
Mr. Charles H. Weir
Assistant City Attorneys
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2015-15136

Dear Mr. Kopp and Mr. Weir:

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# 572981 (ORR# W082002, W081999).

The City of San Antonio (the "city") received two requests for fire department and police reports for specified addresses.¹ The city states it has released some of the requested information, but claims the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.²

Initially, the city informs us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-08204 (2015). However, we find the facts and circumstances on which the prior ruling was based have changed. Accordingly, the city may not rely on Open Records Letter

¹The city sought and received clarification for one of the requests. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²We note the city did not comply with the requirements of section 552.301 of the Government Code for one of the requests. *See* Gov't Code § 552.301(b), (e). Nevertheless, the city raises section 552.101 of the Government Code for the information responsive to this request, which is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. We also note the city complied with section 552.301 in raising section 552.108. Thus, we will consider the city's arguments under those exceptions.

No. 2015-08204 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Therefore, we will address the city's arguments to withhold 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 Code § 552.101. This section encompasses section 773.091 of the Health and Safety Code, which provides in part the following:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(a)-(b). The city informs us the information you have marked under section 773.091 was obtained and generated from records made and maintained by emergency medical services personnel. However, upon review we find this information does not consist of a communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient. *See id.* § 773.091(a). It also does not consist of a record of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that was created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, none of the submitted information is confidential under section 773.091, and the city may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007(c) provides the following:

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. Upon review, the information you have marked under section 58.007 involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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 when the conduct occurred), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Subsection 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 subsection 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). The city states the information you have marked under subsection 552.108(a)(1) relates to a pending criminal investigation. Based on this representation, we conclude the release of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree subsection 552.108(a)(1) is applicable to this information.

Subsection 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 subsection 552.108(a)(2) must demonstrate the information at issue relates to a criminal

investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The city states the information you have marked under subsection 552.108(a)(2) pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree subsection 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the information you have marked under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code.

To conclude, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, which the city must release, the city may withhold the information you have marked under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code. The city 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/dls

Ref: ID# 572981

Enc. Submitted documents

c: Requestor
(w/o enclosures)