



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2015

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2015-15429

Dear Mr. Gorfida:

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# 573385 (Ref. No. 15-385).

The City of Richardson (the "city") received a request for all records of 9-1-1 calls or police activity at a specified address. We understand you have released some information to the requestor, with redactions made pursuant to section 552.130(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-10547 (2015), 2015-01624 (2015), 2014-10506 (2014), and 2013-09359 (2013). In Open Records Letter No. 2015-10547, we determined the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. In Open Records Letter No. 2015-01624, we determined the city's police department (the "department") (1) must withhold certain information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (2) may

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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).

withhold certain information under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code, (3) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy, (4) must withhold certain information under section 552.130 of the Government Code, and (5) must release the remaining information. In Open Records Letter No. 2014-10506, we determined the department (1) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy, (2) must withhold certain information under section 552.130 of the Government Code, (3) may withhold certain remaining under section 552.108(a)(1) of the Government Code, and (4) must release the remaining information. In Open Records Letter No. 2013-09359, we determined, with the exception of basic information, the city may withhold the information at issue under section 552.108(a)(2) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, we conclude the city must rely on Open Records Letter Nos. 2015-10547, 2015-01624, 2014-10506, and 2013-09359 as previous determinations and withhold or release the identical information in accordance with those rulings.² 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). We will address your arguments for any information that was not subject to these previous rulings.

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. This section encompasses section 58.007(c) of the Family Code, which protects juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007(c) 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

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

(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). 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). Upon review, we find incident report number 201400111459 involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the city must withhold incident report number 201400111459 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Id. § 261.201(a). Upon review, we find incident report number 201400138680 relates to an investigation of alleged or suspected child abuse or neglect conducted by the department. *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). Accordingly, we find this information is subject to chapter 261 of the Family Code. We have no indication the department 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 incident report number 201400138680 is confidential pursuant to section 261.201(a) of the Family Code, and the city must withhold

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

it under section 552.101 of the Government Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 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 section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You inform us incident report number 201400105691 pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 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.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note the basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the city may withhold incident report number 201400105691 under section 552.108(a)(2) of the Government Code.⁵

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). We understand you to claim a portion of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the remaining information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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

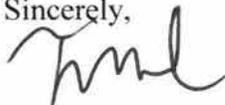
⁵As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

In summary, the city must rely on Open Records Letter Nos. 2015-10547, 2015-01624, 2014-10506, and 2013-09359 as previous determinations and withhold or release the identical information in accordance with those rulings. The city must withhold incident report number 201400111459 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold incident report number 201400138680 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the city may withhold incident report number 201400105691 under section 552.108(a)(2) of the Government Code. The city must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 573385

Enc. Submitted documents

c: Requestor
(w/o enclosures)