



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1088
Austin, Texas 78767-8845

OR2003-5539

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185648.

The Austin Police Department (the "department") received a request for incident report numbers 2000-0160673, 2001-3170225, and 2002-2851892. You claim that incident report number 2000-0160673, and portions of report numbers 2001-3170225 and 2002-2851892, are excepted from disclosure under section 552.101 of the Government Code. You further claim that incident report number 2001-3170225 is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed 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." This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part 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

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Incident report number 2000-0160673 pertains to a call for service regarding a runaway, conduct which is within the scope of section 58.007. *See* Fam. Code § 51.03(a)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return”). Accordingly, we agree that incident report number 2000-0160673 is subject to section 58.007(c). We therefore determine that the department must withhold incident report number 2000-0160673 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Next, you have marked portions of incident report number 2002-2851892 that you claim are excepted from disclosure under section 552.101 in conjunction with the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Upon review, we agree that part of the information you have highlighted in incident report number 2002-2851892 is protected by common-law privacy. We have marked the portions of the highlighted information that the department must withhold pursuant to section 552.101 in conjunction with common-law privacy. However, we find that the remainder of the highlighted information in incident report number 2002-2851892 is not protected by privacy and may not be withheld under section 552.101.

We next address your claim under section 552.108 of the Government Code in relation to incident report number 2001-3170225. Section 552.108(a) 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.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex*

parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You state that incident report number 2001-3170225 relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of incident report number 2001-3170225 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that basic information about an arrested person, an arrest, or a crime is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, basic information regarding the incident at issue in incident report number 2001-3170225 may not be withheld pursuant to section 552.108(a)(1). However, you have marked a portion of the basic information that you seek to withhold pursuant to section 552.101 in conjunction with common-law privacy. Upon review of the submitted information, we agree that a portion of the basic information in incident report number 2001-3170225 is protected by common-law privacy. We have marked the information in incident report number 2001-3170225 that the department must withhold under section 552.101. With the exception of the remaining basic information, the department may withhold the remainder of incident report number 2001-3170225 under section 552.108(a)(1).

Finally, we note that you have marked a Texas driver's license number and a Texas identification card number in incident report number 2002-2851892 as information you seek to withhold under section 552.101. These numbers are excepted from disclosure under section 552.130 of the Government Code, which provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked information pertaining to the Texas driver's license and identification card that the department must withhold under section 552.130 of the Government Code.

In summary, the department must withhold incident report number 2000-0160673 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We have marked the information in incident report numbers 2001-3170225 and 2002-2851892 that the department must withhold pursuant to

section 552.101 in conjunction with common-law privacy. With the exception of the remaining basic information, the department may withhold incident report number 2001-3170225 under section 552.108(a)(1) of the Government Code. The marked information pertaining to a Texas driver's license and a Texas identification card in incident report number 2002-2851892 must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/lmt

Ref: ID# 185648

Enc: Submitted documents

c: Mr. Dennis D. Dement
1100 Guadalupe
Austin, Texas 78701
(w/o enclosures)