



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 12, 2005

Mr. Robert R. Ray  
Assistant city Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2005-08289

Dear Mr. Ray:

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# 232259.

The City of Longview (the "city") received a request for information related to drive-by shootings occurring on five specified dates and four specified streets, as well as for information created in the last year concerning drive-by shootings, gang violence, suspected gang violence, and organized crime in the city. The requestor also seeks any reports on "the Flanagan Street Boys," "the 12<sup>th</sup> Street Gang," other gangs, and other suspected criminal groups within the city, as well as for arrest records pertaining to four named individuals, and other suspects and victims in the specified drive-by shootings. You indicate that some information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.127, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address your obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The city timely submitted its request for a decision; however, the city failed to timely raise section 552.127 of the Government Code. Consequently, the city failed to comply with section 552.301(b) of the Government Code with regard to its claim under section 552.127.

Section 552.127 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). By your failure to comply with section 552.301 in regard to your section 552.127 claim, the city has waived this exception. Therefore, the city may not withhold any of the submitted information on the basis of section 552.127.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a governmental body is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). A request for information about a specific incident or offense, however, does not require the law enforcement agency to compile an individual's criminal history and thus does not implicate the individual's privacy as contemplated in *Reporters Committee*. Furthermore, law enforcement records in which an individual is depicted as a complainant, witness, or involved party other than a suspect, arrestee, or criminal defendant do not constitute records of the criminal history of the individual and thus are not protected by common-law privacy as contemplated in *Reporters Committee*.

The present request, in part, asks for all information held by the city concerning four named individuals. We find that this portion of the request requires the city to compile the criminal histories of the four named individuals, and thus implicates these individuals' right to privacy. Accordingly, to the extent the city maintains law enforcement records depicting the four named individuals as suspects, arrestees, or criminal defendants, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Some of the submitted incident reports, however, pertain to routine traffic violations committed by the named individuals. Information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. *Cf.* Gov't Code § 411.082(2)(B). Thus, the city may not withhold the submitted information pertaining to routine traffic violations on that basis.

Section 552.101 also encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of 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
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender.

Some of the information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information we have marked from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.<sup>1</sup> However, we find that section 58.007(c) is not applicable to any of the remaining information at issue, as it relates to juveniles as complainants, victims, witnesses, or other involved parties and not as suspects or offenders. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code

You also raise section 552.101 in conjunction with section 261.201(a) of the Family Code. This section provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

---

<sup>1</sup>As we reach this conclusion, we need not consider your other claimed exceptions to disclosure for this information.

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, 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). You have failed to demonstrate that any of the offense reports at issue were used or developed in an investigation of abuse or neglect under chapter 261. We therefore determine that section 261.201 is not applicable to any of the offense reports at issue. Accordingly, the city may not withhold any information under section 552.101 in conjunction with section 261.201.

Section 552.108 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). Generally, a governmental body claiming section 552.108 must reasonably explain 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 inform us that the information you seek to withhold under section 552.108 pertains to an ongoing criminal investigation of a series of shooting and assault incidents and related crimes. Based on this representation, we agree that section 552.108(a)(1) is applicable to the information you have marked, and it may be withheld on that basis. *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).<sup>2</sup>

You also contend that other submitted information must be withheld under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to:

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

---

<sup>2</sup>As our ruling under section 552.108 is dispositive, we need not consider your other claimed exceptions to disclosure for this information.

- (3) a personal identification documentation issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have reviewed the submitted records and agree that most of the information you have marked must be withheld under section 552.130. We have marked information that may not be withheld under section 552.130 and that must be released. We have also marked additional information that must be withheld under section 552.130.

We note that the remaining submitted information contains a bank account number to which section 552.136 of the Government Code is applicable. Section 552.136 provides in part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the bank account number that the city must withhold pursuant to section 552.136.

Finally, we note that the submitted information contains social security numbers. Section 552.147 of the Government Code<sup>3</sup> provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold the social security numbers that we have marked under section 552.147.<sup>4</sup>

In summary, to the extent the city maintains law enforcement records depicting the four named individuals as suspects, arrestees, or criminal defendants, such information is

---

<sup>3</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

<sup>4</sup>We note that 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.

excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The information you have marked accordingly may be withheld under section 552.108(a)(1) of the Government Code. Except where we have otherwise indicated, the city must withhold the information it has marked and that we have marked under section 552.130 of the Government Code. The city must withhold the marked bank account number under section 552.136 and the social security numbers that we have marked under section 552.147. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

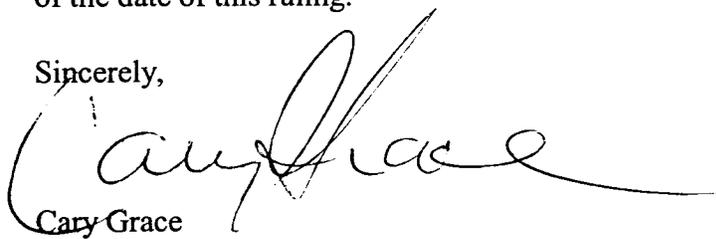
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "Cary Grace", written over a large, faint circular watermark or stamp.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/sdk

Ref: ID# 232259

Enc. Submitted documents

c: Mr. James Draper  
Longview News-Journal  
P.O. Box 1792  
Longview, Texas 75606  
(w/o enclosures)