



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2005

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902

OR2005-09666

Dear Mr. Risley:

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# 234889.

The City of Victoria (the "city") received a request for all records and reports involving the requestor and/or another named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 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 exception encompasses the common law right to privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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. Furthermore, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that refers to

an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor asks the city for all records and reports involving himself and/or another named individual. To the extent the requestor asks the city to compile information about another individual, that individual's right to privacy is implicated. Thus, if the city has any records in which the other named individual is portrayed as a suspect, defendant, or arrestee, the city must withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that the requestor has a special right of access to a compilation of his own criminal history, to the extent that it exists. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles).

We note that you have submitted records that either do not list the other named individual as a suspect, defendant, or arrestee, or which involve the requestor. As such, this information is not protected on the basis of *Reporters Committee*. However, you claim that these records are protected under common law privacy based on the holding in *Industrial Foundation*. We have reviewed the records at issue and find that some of them contain information related to the requestor that the city would normally have to withhold under common law privacy. However, the requestor has a special right of access to information that would ordinarily be withheld to protect his common law privacy rights, and such information may not be withheld from the requestor on that basis. *See Gov't Code § 552.023(b)*. Thus, none of the submitted information may be withheld under section 552.101 on the basis of the holding in *Industrial Foundation*.

You claim that some of the submitted information is protected from disclosure under section 58.007 of the Family Code. Section 552.101 also encompasses information protected by other statutes, such as section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See Fam. Code § 51.02(2)*. 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). We have reviewed the submitted information and find that one of the submitted incident reports involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). Thus, this report, which we have marked, is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this information is confidential in accordance with section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code.

Next, we note that the remaining information includes ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer’s Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). In this case, the requestor has not provided two of the three pieces of information specified by the statute. Accordingly, the ST-3 accident reports must be withheld in their entirety.

The city claims that the remaining records are excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 section 552.108(a)(1) must reasonably explain how and why the release of the requested information 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 (Tex. 1977).

The city states that the remaining records are “relevant to charges of stalking that are being investigated for possible presentation to the District Attorney for prosecution.” Based on this representation and our review of the remaining information, we conclude that section 552.108(a)(1) is applicable to some of the records at issue. *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). However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*. Thus, with the exception of the basic front page offense and arrest information, you may withhold the information we have marked under section 552.108(a)(1). We note, however, that you have not explained how the remaining information, which consists of various reports regarding criminal offenses and motor vehicle accidents, is related to a stalking investigation. Because you have not adequately explained how release of the remaining information would interfere with the stalking investigation, none of this information may be withheld under section 552.108 of the Government Code.

However, we note that these remaining documents contain Texas motor vehicle record information. Section 552.130 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[.]

Gov't Code § 552.130(a). Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130.

Finally, we note that the remaining documents also contain social security numbers. Section 552.147 of the Government Code¹ 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 we have marked under section 552.147.²

In summary, to the extent the city maintains records in which the other named individual is portrayed in criminal matters as a suspect, defendant, or arrestee, it must withhold such information in accordance with section 552.101 of the Government Code in conjunction with the holding in *Reporters Committee*. The city must withhold the information we have

¹Added 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).

²We 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.

marked under section 552.101 in conjunction with section 58.007(c) of the Family Code. The ST-3 accident reports must be withheld in their entirety pursuant to chapter 550 of the Transportation Code. With the exception of basic information, the city may withhold the information we have marked under section 552.108 of the Government Code. The city must also withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code, as well as the submitted social security numbers under section 552.147 of the Government Code. The city must release the remaining information to the requestor.³

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).

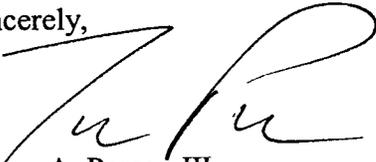
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³We note that because the submitted documents contain information that would normally be excepted from disclosure if the requestor did not have a right of access to that information under section 552.023 of the Government Code, the city should again seek a decision from this office if it receives a request for this information from an individual other than the requestor.

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 234889

Enc. Submitted documents

c: Mr. Steven Rozas
6803 North Navarro #125
Victoria, Texas 77904
(w/o enclosures)