



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2007

Ms. Kelly E. Pagan  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2007-16256

Dear Ms. Pagan:

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# 296651.

The Fort Worth Police Department (the "department") received a request for all call sheets and police reports pertaining to a specified address during a specified time period, and for information pertaining to a specified report related to "Police Reporting Areas E215 and E445."<sup>1</sup> You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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." Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code. Law enforcement records involving juvenile offenders and relating to conduct that occurred on

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<sup>1</sup>We note that the requestor made his request for information on August 23, 2007; however, you explain that the department required the requestor to make a deposit for payment of the anticipated costs in accordance with section 552.263 of the Government Code, and that, on September 18, 2007, the requestor submitted the deposit. *See* Gov't Code 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond). Thus, we agree that September 18, 2007, is the date the department received this specific request for information.

or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) provides in pertinent part:

(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). 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 id.* § 51.02(2). Some of the submitted information involves juvenile conduct and reports of juvenile runaways that occurred after September 1, 1997. All of this conduct is within the scope of section 58.007. *See id.* § 51.03(b)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). It does not appear that any of the exceptions in section 58.007 apply; therefore, the information we have marked is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information under section 552.101 of the Government Code. However, none of the remaining information that you have marked identifies a juvenile engaged in delinquent conduct or conduct indicating a need for supervision. Thus, you have failed to demonstrate that any of the remaining marked information is a juvenile law enforcement record. Accordingly, none of the remaining marked information may be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

The 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, 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). Some of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201 of the Family Code. *See* Fam. Code. §§ 261.001(1), (4) (defining “abuse” and “neglect” for the purposes of chapter 261). You do not inform us that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the information you have marked is confidential pursuant to section 261.201 of the Family Code, and that the department must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You seek to withhold some of the remaining information under section 552.101 in conjunction with chapter 772 of the Health and Safety Code. Section 772.218 of the Health and Safety Code applies to an emergency 9-1-1 district for a county with a population over 860,000 and established in accordance with chapter 772. Section 772.218 makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You state that the City of Fort Worth is part of an emergency communication district that was established under section 772.218. You further state that the telephone numbers and addresses at issue were provided by a service provider. Thus, based on your representations and our review, we determine that the phone numbers and addresses you have marked under section 772.218 of the Health and Safety Code in the remaining records are excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical

handicaps). We agree that the information you have marked under common-law privacy, except as we have marked for release, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked some additional information that is private and must also be withheld under section 552.101.

Section 552.108(a) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information in Exhibits C, D, and E relates to pending criminal investigations and prosecutions and provide documentation from the department and Tarrant County District Attorney’s Office requesting that this information not be released. Based on these representations, we conclude that 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 (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). Thus, we agree that section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177, 186-187. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold Exhibits C, D, and E pursuant to section 552.108(a)(1).

Finally, you claim that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a Texas driver’s license or motor vehicle title or registration. Gov’t Code § 552.130. The department must withhold the information you have marked under section 552.130.

In summary, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with (1) section 58.007 of the Family Code; (2) section 261.201 of the Family Code; (3) section 772.218 of the Health and Safety Code ; and (4) common-law privacy. Except for basic information, the department may withhold Exhibits C, D, and E pursuant to section 552.108 of the Government Code. The department

must withhold the information you have marked under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.<sup>2</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining claims.

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 "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 296651

Enc. Submitted documents

c: Mr. Joe D. Morris  
P.O. Box 118285  
Carrollton, Texas 75011-8285  
(w/o enclosures)