



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 10, 2008

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2008-16820

Dear Ms. Byles:

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# 329576.

The City of Fort Worth (the "city") received a request for numerous specified call sheets. You state that you have redacted Texas-issued motor vehicle record information pursuant to the previous determinations issued by this office in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted some of the requested call sheets for our review. To the extent the other requested information existed at the time the city received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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<sup>1</sup>You inform us that the requestor agreed to allow the city to redact the telephone numbers and addresses of 9-1-1 callers. As this information is no longer encompassed by the request, it is not responsive and we do not address its availability in this ruling.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You contend that the submitted information contained in Exhibit C-2 is made confidential under section 261.201 of the Family Code, which provides in pertinent part:

(a) 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). Upon review, we agree that a portion of Exhibit C-2, which we have marked, consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, this information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> As to the remaining information you seek to withhold under section 261.201, after review of your arguments and the documents at issue, we find you have failed to establish that the information at issue consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. In addition, we note that section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *See* Fam. Code. § 261.201(h). We note that one of the incidents at issue allegedly occurred at a child care facility that is regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code; thus section 261.201 is not

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<sup>2</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

applicable to this investigation. Therefore, no portion of the remaining information is confidential under section 261.201, and the city may not withhold it under section 552.101 on that ground.

You also raise section 552.101 in conjunction with section 58.007 of the Family Code for the submitted information contained in Exhibit C-3. 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 58.007 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 Subchapters B, D, and E.

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). A portion of the information at issue involves reports of juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the section 58.007 exceptions apply. Therefore, the city must withhold the information we have marked in Exhibit C-3 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, none of the remaining information in Exhibit C-3 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 information at issue is a juvenile law enforcement record. Accordingly, none of the remaining information in Exhibit C-3 may be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may

disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code § 411.083.* The information contained in Exhibit C-6 does not contain CHRI for purposes of chapter 411; therefore, no portion of Exhibit C-6 is confidential under chapter 411, and the city may not withhold any information under section 552.101 of the Government Code on that ground.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The submitted information in Exhibit C-6 does not contain criminal history information that is confidential under common-law privacy; therefore, the city may not withhold any of the submitted information under section 552.101 on that ground.

Common-law privacy also protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked portions of the remaining information that must be withheld from the requestor under section 552.101 in conjunction with common-law privacy.

You raise section 552.108 of the Government Code for the information contained in Exhibit C-1. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this

exception is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the information at issue relates to a pending criminal investigation. Based on your representation and our review, we determine 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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, you may withhold the information in Exhibit C-1 from disclosure based on section 552.108(a)(1).

We note that the remaining documents contain unredacted information subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Thus, the city must withhold the information we have marked under section 552.130.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 261.201 and 58.007 of the Family Code. The city must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city may withhold the information in Exhibit C-1 from disclosure based on section 552.108(a)(1). The city must withhold the information we have marked under section 552.130. The remaining submitted information must be released.

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). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 329576

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)