



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2008

Mr. C. Corey Fickes  
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2008-17314

Dear Mr. Fickes:

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# 330583.

The City of Richland Hills (the "city"), which you represent, received a request for any police reports pertaining to two specified addresses from certain periods of time. You state you have provided some information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted police reports.

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 261.201(a) of the Family Code, which 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 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.

Fam. Code § 261.201(a). You represent to this office that the report submitted as Exhibit D was used or developed in an investigation into alleged child neglect conducted by the city's police department. Based on your representations, we agree that Exhibit D is subject to section 261.201 of the Family Code. *See id.* § 261.001(4) (defining "neglect" for purposes of Family Code ch. 261). You have not indicated that the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit D 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 this information under section 552.101 of the Government Code as information made confidential by law. As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure of Exhibit D.

Next, you claim that portions of the remaining information contain criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Section 411.083 of the Government Code, which is encompassed by section 552.101 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. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find that none of the remaining information is subject to section 411.083. Thus, no part of the remaining information may be withheld as such under section 552.101 of the Government Code.

You assert that the report labeled Exhibit C is subject to common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy 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). 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. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although it appears you assert Exhibit C is subject to common-law privacy in its entirety, there is no indication that the requestor knows the nature of this incident and the identity of the individual whose privacy interests are implicated. Accordingly, Exhibit C may not be withheld in its entirety under common-law privacy. However, we agree Exhibit C contains information that is highly intimate or embarrassing and not of legitimate public interest. We have marked information within Exhibit C that must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(1) 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 . . . 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 at issue. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the report submitted as Exhibit E is subject to section 552.108(a)(1). You state that this report relates to an active criminal investigation being conducted by the city's police department. Based on your representations and our review of the information at issue, we conclude that the release of Exhibit E 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 not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, except for basic information, Exhibit E may be withheld under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure of Exhibit E.

You state that the remaining reports at issue contain Texas-issued driver's license information. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). Therefore, the city must withhold the Texas-issued driver's license information you have marked in the remaining reports at issue,

along with the additional information we have marked, under section 552.130 of the Government Code.

Finally, you claim that the social security numbers you have marked are excepted from disclosure under section 552.147(b) of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Therefore, the city may withhold the social security numbers in the remaining information at issue under section 552.147.

In summary, the city must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must also withhold the information we have marked within Exhibit C under section 552.101 in conjunction with common-law privacy. Except for basic information, the city may withhold Exhibit E under section 552.108(a)(1) of the Government Code. From the remaining information at issue, the city must withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The city may withhold the information marked under section 552.147 of the Government Code. The remaining 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 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 330583

Enc. Submitted documents

c: Requestor  
(w/o enclosures)