



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2009

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

OR2009-05592

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# 341065 (FW ID# 1679-09).

The City of Fort Worth (the "city") received a request for any police reports pertaining to a specified address from 2006 through 2008. You state you have redacted Texas-issued driver's license and motor vehicle record information pursuant to the previous determinations issued in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that the submitted police reports and their accompanying information are 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.

We first address your argument under section 552.108, as this is the most encompassing exception you raise. 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 claiming section 552.108 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). You state, and provide an affidavit confirming, that the city's police department objects to the

release of Exhibits C-5, C-6, and C-7 because these exhibits pertain to pending criminal investigations. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Based on this representation and our review, we conclude that the release of these exhibits 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) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, except for basic information, the city may withhold Exhibits C-5, C-6, and C-7 under section 552.108(a)(1).¹

We now turn to your arguments against disclosure of the remaining exhibits. 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. This section encompasses the doctrine of common-law privacy, which protects information that 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 types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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.

You seek to withhold the police reports within Exhibit C-1, which pertain to alleged sexual assaults, in their entirety under common-law privacy. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You acknowledge that the requestor does not appear to know the identity of the alleged victims in Exhibit C-1. Thus, it is not necessary to withhold any of the reports within Exhibit C-1

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of Exhibits C-5, C-6, and C-7.

in their entirety to preserve the victims' common-law right to privacy. We agree, however, that the identifying information of the victim within report No. 06-66754, which we have marked, must be withheld under common-law privacy and section 552.101. You acknowledge that report No. 07-77388 uses a pseudonym and not the victim's real name. The use of a pseudonym by the victim sufficiently protects the victim's privacy. Therefore, none of report No. 07-77388 may be withheld under section 552.101 in conjunction with common-law privacy.

You also assert that Exhibit C-4 contains information that must be withheld under section 552.101 in conjunction with common-law privacy and "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7.

In this instance, the city seeks to withhold the names of the investigating officers within Exhibit C-4, who you state are undercover officers, under section 552.101 of the Government Code. You inform us that release of the highlighted information, which identifies the undercover officers, would not only compromise the effectiveness of these individuals as undercover officers, but would likely cause the officers to face imminent threat of physical danger. Based on these representations and our review, we agree that the city must withhold the identifying information of these undercover officers under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim the reports within Exhibit C-2 are confidential under section 58.007(c) of the Family Code. Section 552.101 also encompasses section 58.007 of the Family Code, which provides that juvenile law enforcement records relating to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential. Section 58.007(c) provides as follows:

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 at the time of the reported conduct. *See id.* § 51.02(2). You assert the reports within Exhibit C-2 are subject to section 58.007(c). Based on your representations and our review, we agree that these reports pertain to juvenile delinquent conduct that occurred after September 1, 1997. Thus, Exhibit C-2 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

You claim that portions of Exhibits C-1 and C-3 are excepted from disclosure under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See Open Records Decision No. 649 (1996)*. These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You state that the city is part of an emergency communication district established under section 772.218. You state that the telephone numbers you have marked are related to 9-1-1 calls and were obtained from a 9-1-1 service provider. Based on your representations, we conclude that the city must withhold the originating telephone numbers you have marked in Exhibits C-1 and C-3 under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

In summary, except for basic information, the city may withhold Exhibits C-5, C-6, and C-7 under section 552.108(a)(1) of the Government Code. The city must withhold the information marked within Exhibits C-1 and C-4 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold Exhibit C-2 in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. Finally, the city must withhold the information you marked within Exhibits C-1 and C-3 under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. The remaining information at issue must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 341065

Enc. Submitted documents

c: Requestor
(w/o enclosures)