



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 1, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2009-07449

Dear Mr. Phillips:

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# 344564 (PIR No. 2474-09).

The City of Fort Worth (the "city") received a request for police records involving a specified address during a particular time interval. You inform us that the city has redacted social security numbers and Texas motor vehicle information from responsive records under section 552.147 of the Government Code and previous determinations issued to the city under section 552.130 of the Government Code.¹ You state that some of the requested information has been released. You claim that other responsive 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 information you submitted.

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 exception encompasses information that other statutes make confidential. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code

¹See Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting attorney general's decision under Act); Open Records Decision No. 673 (2001) (previous determinations).

§ 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* As you note, the submitted information includes a peace officer's crash report that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). The requestor has not provided two of the three items of information specified by section 550.065(c)(4). Therefore, the city must withhold the submitted crash report pursuant to section 550.065(b) of the Transportation Code.

You also raise section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, which provides in 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 Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). We note that section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We find that some of the submitted information involves juvenile suspects, so as to fall within the scope of section 58.007(c). The city must withhold that information, which we have marked, under

section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses sections 772.118, 772.218, and 772.318 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 are applicable to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). Those sections make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand that the city is part of a emergency communication district established under section 772.218. You have highlighted information relating to 911 callers in the remaining documents. You state that the highlighted telephone numbers and address were furnished to the city by a 911 service supplier. Based on your representation, we conclude that the city must withhold the highlighted telephone numbers and addresses under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

You also raise section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* 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). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You contend that some of the remaining information is protected by common-law privacy. Having reviewed the information at issue, we conclude that the information that we have marked is intimate or embarrassing and not a matter of legitimate public interest. The city must generally withhold the marked information under section 552.101 in conjunction with common-law privacy. The city may not withhold any of the remaining information on that basis. We also note that this requestor may be an authorized representative of the individual to whom some of the private information pertains. If so, then the requestor would have a right of access to the private information that pertains to that individual under

section 552.023 of the Government Code. *See* Gov't Code § 552.023(a).² If the requestor has a right of access, then the information pertaining to that individual may not be withheld from this requestor on privacy grounds under section 552.101. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We have marked the information that may be subject to section 552.023.

You also raise 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and have provided an affidavit from a police detective stating, that report number 07-120604 and the remaining information in a related call-for-service report pertain to a pending criminal investigation. Based on your representation and the affidavit, we conclude that section 552.108(a)(1) is generally applicable to report number 07-120604. *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).

With regard to the related call-for-service report, we note 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. In Open Records Decision No. 649 (1996), this office concluded that information contained in a computer-assisted dispatch (“CAD”) report is substantially the same as basic information and thus is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police dispatch records or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Therefore, the remaining information in the call-for-service report that you seek to withhold under section 552.108 is basic information. As such, that information may not be withheld under section 552.108(a)(1) and must be released. The city also must release basic information from incident report number 07-120604, including a detailed description of the offense, even if the information does not literally appear on the front page of the report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The

²Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov't Code § 552.023(a).

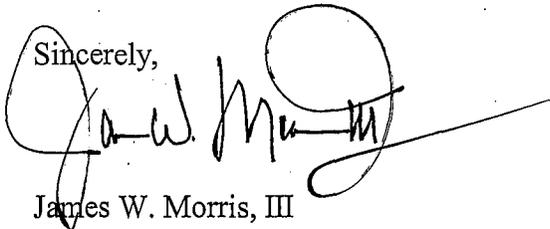
city may withhold the remaining information in the incident report under section 552.108(a)(1).

In summary: (1) the crash report must be withheld pursuant to section 550.065(b) of the Transportation Code; (2) the city must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (3) the highlighted telephone numbers and address of 911 callers must be withheld under section 552.101 in conjunction with section 772.218 of the Health and Safety Code; (4) the marked information that is protected by common-law privacy must be withheld under section 552.101, except to the extent that the requestor has a right of access under section 552.023 of the Government Code; and (5) except for basic information, the city may withhold report number 07-120604 under section 552.108(a)(1) of the Government Code. The rest of the submitted information 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 344564

Enc: Submitted documents

c: Requestor
(w/o enclosures)