



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2009

Ms. LeAnn M. Quinn, TRMC
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-16019

Dear Ms. Quinn:

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# 361007 (Reference No. 09-330).

The City of Cedar Park (the "city") received a request for information related to police calls to a specified location during a specified time period. You state some of the information will be released to the requestor. You claim that portions of the submitted information are exempted 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.

Initially, we note the city has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). We note section 552.147(b) of the Government Code generally authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, you do not assert, nor does our review of our records indicate, that the city has been authorized to withhold the other types of information it has redacted without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting information not subject to section 552.147(b) that it submits to this office in seeking an open records ruling, unless

it is otherwise authorized to do so. Failure to do so may result in the presumption that the redacted information is public. *See* Gov't Code § 552.302.

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. 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 section 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); *see id.* § 51.03(a)–(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Upon review, we find the information in Exhibit G pertains to a juvenile engaged in conduct indicating a need for supervision that occurred after September 1, 1997. Additionally, we find some of the information in Exhibit B pertains to juvenile delinquent conduct and conduct indicating a need for supervision. It appears none of the exceptions in section 58.007 apply to the information at issue. Therefore, Exhibit G and the call sheets we have marked in Exhibit B are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

You also seek to withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, we note that the information in Exhibit D, which appears to pertain to a theft, only identifies a 40 year-old subject and a 42 year-old subject. Thus, you have failed to demonstrate that Exhibit D contains information relating to juvenile delinquent conduct or conduct indicating need for supervision. Accordingly, we find Exhibit D is not confidential information under section 58.007 of the Family Code.

Section 552.101 additionally encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, 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 state the call sheets in Exhibit F were generated as a result of a welfare check on a child, and you indicate that this information pertains to an investigation by the Department of Family and Protective Services. Based on your representations and our review of the information at issue, we find Exhibit F is within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Additionally, we find that one of the call sheets in Exhibit B was used or developed in an investigation of alleged or suspected child abuse; as such, this call sheet is also within the scope of section 261.201. You have not indicated the city has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, Exhibit F and the call sheet we have marked in Exhibit B are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that call sheet numbers 0903-3981, 0904-4296, 0904-5070, and 0906-3958 in Exhibit C and call sheet number 0906-1760 in Exhibit D relate to pending criminal prosecutions. Further, you state that call sheet numbers 0908-0925 and 0908-1665 in Exhibit C relate to pending criminal investigations. Based upon your 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, section 552.108(a)(1) is generally applicable to Exhibits C and D.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted call sheet in Exhibit E relates to a case that was closed unfounded. Thus, section 552.108(a)(2) is generally applicable to Exhibit E.

As you acknowledge, 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). Such basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. In this instance, Exhibits C, D, and E consist entirely of call sheets from a Computer Aided Dispatch ("CAD") system. In Open Records Decision No. 649 (1996), this office concluded that information contained in a 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, because Exhibits C, D, and E are basic information, they may not be withheld under section 552.108 of the Government Code.

We note the submitted information contains criminal history record information that is confidential by statute. Section 552.101 encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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. *See* Gov't Code § 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* Gov't Code § 411.090-.127. Furthermore, any CHRI obtained from the 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 some of the information in Exhibits B and C constitutes CHRI. We have marked the information in Exhibits B and C the city must withhold pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

We note that section 552.101 of the Government Code 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (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. This office has found that common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See Open Records Decision No. 384* (1983); *cf.* Fam. Code § 261.201. Additionally, 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find that certain information in Exhibits B and C is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1), (2). We note, however, that section 552.130 does not apply to out-of-state driver's licenses and motor vehicle record information. Also, the requestor has a right to her own information under section 552.023(a) of the Government Code. *See id.* § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Thus, the information you marked pertaining to out-of-state driver's licenses and the requestor's motor vehicle information is not confidential under section 552.130. Therefore, the city must withhold only the Texas motor vehicle record information we have marked in Exhibits B, C, D, and E under section 552.130 of the Government Code. The remaining information you have marked must be released.

In summary, the city must withhold Exhibit G and the call sheets we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city must withhold Exhibit F and the call sheet we have marked in Exhibit B under section 552.101 in conjunction with section 261.201 of the Family Code. The city must withhold the CHRI we have marked in Exhibits B and C under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the information we have marked in Exhibits B and C under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked in Exhibits B, C, D, and E under section 552.130 of the Government Code. The remaining 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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 361007

Enc. Submitted documents

c: Requestor
(w/o enclosures)