



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2009

Mr. Darrell G-M Noga
Fee, Smith, Sharp & Vitullo, L.L.P.
For City of Coppell
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2009-18109

Dear Mr. Noga:

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# 365187 (ORR Nos. 9826, 9837, 9838).

The City of Coppell (the "city"), which you represent, received four requests from the same requestor for information related to three specified addresses or the residents of those addresses, as well as information pertaining to alarm permits and alarm permit applications related to one of the specified addresses. You state that some responsive information has been or will be released to the requestor. You state that the city has no responsive information related to one of the specified addresses.¹ You claim that 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 information.

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 information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

that occurred on or after September 1, 1997, are confidential under section 58.007. 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 Fam. Code § 51.02(2). Section 58.007 provides in pertinent part 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.

Id. § 58.007(c). Some of the submitted information consists of law enforcement records involving juvenile delinquent conduct that occurred after September 1, 1997; therefore, this information is subject to section 58.007. We have marked the information that the city must withhold under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As we are able to make this determination, we do not address your remaining claims regarding this information. However, while report number 9026872 contains references to an incident involving a juvenile, it does not identify the juvenile as a suspect or offender. Therefore, the city has failed to demonstrate that report number 9026872 is a juvenile law enforcement record for purposes of section 58.007. Accordingly, report number 9026872 may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

You also claim that report number 9026872 is excepted under section 552.101 in conjunction with common-law privacy.² The common-law right of 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 types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical

²Section 552.101 also encompasses the doctrine of common-law privacy.

abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Upon review, we find you have failed to demonstrate how any portion of report number 9026872 constitutes highly intimate or embarrassing information that is not of legitimate public interest. Therefore, the city may not withhold any portion of report number 9026872 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses section 1702.284 of the Occupations Code, which provides:

Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the [Texas Private Security Board], to the alarm company to which the confidential records relate, or as otherwise required by state law or court order.

Occ. Code § 1702.284. Based on our review, we conclude that the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1702.284 of the Occupations Code. However, you have failed to demonstrate how any portion of the remaining information at issue concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used. Accordingly, no portion of the remaining information at issue may be withheld under section 552.101 in conjunction with section 1702.284. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

You also claim that the remaining alarm information is excepted from disclosure by 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Section 552.108(b)(1) of the Government Code excepts from public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution” if “release of the internal record or notation would interfere with law enforcement or prosecution.” *Id.* § 552.108(b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that release of the information could interfere with the city’s ability to protect citizens and

businesses and its ability to detect and investigate crime. We conclude that you have failed to demonstrate how release of the remaining responsive information not made confidential by section 1702.284 would interfere with the detection, investigation, or prosecution of crime. Thus, no portion of the remaining alarm information may be withheld under section 552.108 of the Government Code.

Section 552.130 of the Government Code provides 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.³ Gov't Code § 552.130(a)(1), (2). We have marked the information that must be withheld under section 552.130 of the Government Code.

Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 58.007 of the Family Code, and (2) section 1702.284 of the Occupations Code. We also have marked the information that must be withheld under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

³We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 365187

Enc. Submitted documents

c: Requestor
(w/o enclosures)