



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2010

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

OR2010-01442

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# 368599 (Fort Worth PIR No. 0537-10).

The Fort Worth Police Department (the "department") received a request for nine specified police incident reports. You state that social security numbers and Texas motor vehicle record information have been redacted from the submitted information pursuant to section 552.147 of the Government Code and the previous determinations issued to Fort Worth in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.136, and 552.137 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 "[i]nformation 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 261.201(a) of the Family Code, which provides as follows:

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

(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.

(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 that report number 06-61698 involved an investigation of sexual assault of a child and indecency with a child. *See* Fam. Code § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *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). Based on your representations and our review, we agree that report number 06-61698 is within the scope of section 261.201 of the Family Code. You have not indicated that the 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, report number 06-61698 is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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 highly intimate or 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. 540 S.W.2d at 683.

In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Therefore, the department must withhold the information identifying sexual assault victims, which you have marked, pursuant to section 552.101 in conjunction with common-law

privacy. We have marked additional information that must be withheld under section 552.101 in conjunction with common-law privacy.²

Section 552.108(a) 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 have provided an affidavit from a detective with the department stating that the information in report number 09-115184 is currently under investigation by the department and release of the information would interfere with law enforcement activities. Based upon this representation, we conclude section 552.108(a)(1) is applicable to the information. *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 that section 552.108 is limited by section 552.108(c), which provides 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). Basic information refers to the information set forth in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information not excepted from disclosure by 552.108 in *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold report number 09-115184 under section 552.108 of the Government Code.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Upon review, we find that the department must withhold the debit card number you have marked under section 552.136 of the Government Code.

In summary, the department must withhold report number 06-61698 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information identifying victims of sexual assault, which you have marked and we have marked, under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the department may withhold report number 09-115184 under section 552.108(a)(1) of the Government Code. The department

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

must withhold the debit card number you have marked under section 552.136 of the Government Code.³ 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 368599

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including debit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.