



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 16, 2010

Mr. Julian W. Taylor, III  
Law Office of Wallace Shaw, P.C.  
Attorney for City of Freeport  
P.O. Box 3073  
Freeport, Texas 77542-1273

OR2010-03710

Dear Mr. Taylor:

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# 372699.

The Freeport Police Department (the "department"), which you represent, received a request for three categories of information pertaining to a named department officer.<sup>1</sup> We understand you have released information responsive to Category 1, Category 2, and a portion of Category 3 to the requestor. You state you will redact information in accordance with Open Records Decision No. 670 (2001), which is a previous determination by this office authorizing a governmental body to redact information subject to section 552.117(a)(2) of the Government Code.<sup>2</sup> You also state you will redact social security numbers pursuant to section 552.147 of the Government Code.<sup>3</sup> You claim that the submitted information in Exhibits C, E, G, and H is excepted from disclosure under sections 552.101 and 552.108 of

---

<sup>1</sup> We note the requestor modified his request to exclude driver's license numbers, law enforcement numbers, and Social Security numbers. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup> ORD 670 allows a governmental body to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers under section 552.117 of the Government Code without the necessity of requesting an attorney general decision under section 552.301. ORD 670 at 6.

<sup>3</sup> Section 552.147(b) of the Government Code 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. Gov't Code § 552.147(b).

the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received comments from the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, you state you have marked certain information in Exhibits E and G as non-responsive because this information is outside the scope of the request. Upon review, we agree that the information we have marked in Exhibits C, E, and H is non-responsive because it is outside the scope of the request. This ruling does not address the public availability of any non-responsive information, and the department is not required to release that information in response to the request. However, we note the information you have marked as non-responsive in Exhibits E and G is part of a complaint against the department officer at issue. Therefore, we find this information is responsive to the instant request, and we will address your arguments against its disclosure.

Next, we must address the department's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)*. You state that the department received the request for information on December 22, 2009. However, you did not submit to this office the information at issue or written comments stating why the noted exceptions apply until January 15, 2010, which was more than 15 business days after the date you received the request for information. Although you inform us of the broad nature of the request at issue, we note that if the information requested is unclear to a governmental body, a governmental body may ask the requestor to clarify the request or discuss with the requestor how the scope of the request might be narrowed. *See Gov't Code § 552.222(b)*; *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (administrative inconvenience in responding to a request is not grounds for refusing to comply with the request under the Act). Further, although you assert the dates of December 24 and December 31 should not be counted toward the department's fifteen-day deadline due to "the customary nature of the holiday season, as celebrated and vacationed," we note the information you submitted indicates the department was open for business on those dates. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex.

App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). You claim the submitted information is confidential under sections 552.101 and 552.108 of the Government Code. Section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, your claim under section 552.108 does not provide a compelling reason for non-disclosure, and the department may not withhold any of the submitted information on that basis. However, because section 552.101 can provide a compelling reason for nondisclosure, we will address your argument under this exception.

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 protected by other statutes, such as 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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. 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). We note section 58.007(c) is only applicable to law enforcement records and files. Upon review, we find the cover sheet and two voluntary statements you have marked under section 58.007 are administrative records that are not law enforcement records for purposes of section 58.007. As such, this information is not confidential under section 58.007, and none of it may be withheld under section 552.101 on that basis.

However, we note that some of the remaining information may be subject to the doctrine of common-law privacy, which is also encompassed by section 552.101 of the Government

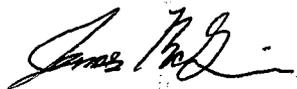
Code.<sup>4</sup> Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The 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. We note the doctrine of common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007.

Upon review, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the remaining 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](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/cc

---

<sup>4</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 372699

Enc. Submitted documents

c: Requestor  
(w/o enclosures)