



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2010

Mr. Bennett M. Wyse
Assistant City Attorney
City of Lavon
Messer, Campbell & Brady, L.L.P.
6351 Preston Road., Suite 350
Frisco, Texas 75034

OR2010-05385

Dear Mr. Wyse:

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# 376069.

The City of Lavon (the "city"), which you represent, received a request for sixteen categories of information pertaining to activities occurring on specified dates in a specified time frame. You state you do not maintain information responsive to Categories a, b, c, g, n, and o.¹ You also state you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.119, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note that section 552.301(b) of the Government Code requires a governmental body that desires to withhold information under the Act to ask for the attorney general's decision and state the exceptions that apply no later than ten business days after the date of receiving the written request. You indicate the city received the instant request for information on January 26, 2010. The city sought clarification from the requestor on February 3, 2010 as to the scope of the request, and the requestor responded on

¹We note that the 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).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

February 8, 2010.³ *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). Accordingly, as we have no indication that the city acted in bad faith in seeking clarification in this case, we consider the city's ten day period for requesting a decision under section 552.301(b) to have commenced on February 8, 2010, the date of the city's receipt of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, No. 07-0931, 2010 WL 571972, at *3 (Tex. February 19, 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, as your brief requesting a decision from this office was faxed on February 12, 2010, we consider the city's request to have been timely made.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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). 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). You contend that the submitted information is subject to section 58.007. However, none of the individuals listed as suspects in the submitted information were under the age of seventeen at the time of the offense. Upon review of your arguments and the submitted report, we find you have failed to demonstrate how the submitted information

³The city informs this office that the city was closed for business on January 29, 2010 and February 5, 2010.

involves juvenile delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. *See id.* § 51.03(a), (b). Thus, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.108(a)(1) 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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). 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 the submitted information pertains to a pending investigation or prosecution by the Collin County Criminal District Attorney’s Office. Based on your representations and our review, we conclude that the release of the submitted 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we conclude section 552.108(a)(1) is applicable to the submitted information.

We note, however, that the submitted information includes citations. Because a copy of a citation is provided to an individual who is cited, we find that release of the submitted citations will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). We therefore conclude that the submitted citations may not be withheld under section 552.108(a)(1).

We also note 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of the citations and basic information, the city may withhold the submitted information from disclosure under section 552.108(a)(1) of the Government Code.⁴

You assert that portions of the citations and basic information are excepted under common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v.*

⁴As our ruling is dispositive, we need not address your arguments against disclosure under sections 552.111 and 552.119 of the Government Code.

Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. We note the public has a legitimate interest in knowing the general details of a crime. *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994)); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (public has legitimate interest in details of crime and police efforts to combat crime in community). Upon review, we find you have failed to establish that any portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the remaining information is not confidential under common-law privacy and it may not be withheld under section 552.101 on this basis.

We note the citations contain information subject to sections 552.130 and 552.147 of the Government Code. Section 552.130 provides that 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. Gov’t Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked in the citations pursuant to section 552.130 of the Government Code. However, no portion of the remaining information you have marked consists of Texas motor vehicle record information. Thus, section 552.130 is not applicable to any of the remaining information you have marked, and it may not be withheld on that basis.⁵

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. The city must withhold the social security numbers we have marked in the remaining information under section 552.147 of the Government Code. However, no portion of the remaining information you have marked consists of security numbers. Thus, section 552.147 is not applicable to any of the remaining information you have marked, and it may not be withheld on that basis.⁶

⁵We 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 Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

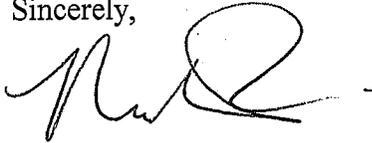
⁶Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

In summary, with the exception of the citations and basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. The city must withhold the Texas motor vehicle information we have marked under section 552.130 of the Government Code. The city must withhold the social security numbers we have marked under section 552.147 of the Government Code.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 376069

Enc. Submitted documents

cc: Requestor
(w/o enclosures)
