



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2010

Mr. Steven L. Weathered
Attorney for City of League City
Ross, Banks, May, Cron, & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2010-08062

Dear Mr. Weathered:

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# 381461 (PIR #10-133).

The League City Police Department (the "department"), which you represent, received a request for twenty-seven categories of information held by the department, including information pertaining to thirteen named individuals and their arrests on specified dates. You state you do not maintain information responsive to some categories of the request.¹ We understand you to assert you will release some of the requested information to the requestor. You state you will redact certain information pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).² You also indicate you will redact social security numbers pursuant to section 552.147 of the

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 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 and license plate numbers under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code.³ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.⁴ We have considered the exception you claim and reviewed the submitted representative sample of information.⁵ We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

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 section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision 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

³Section 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. *See Gov't Code § 552.147(b)*.

⁴Although you raise section 552.108 of the Government Code in conjunction with section 58.007 of the Family Code, section 552.101 of the Government Code is the proper exception to raise in conjunction with section 58.007. Additionally, although you initially raised sections 552.102, 552.103, 552.106, 552.107, 552.111, 552.127, 552.130 and 552.139 of the Government Code as exceptions to disclosure, you did not submit to this office written comments stating the reasons why these sections would allow the information to be withheld. Therefore, we assume you no longer assert these exceptions. *See Gov't Code §§ 552.301, 302.*

⁵We 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.

- (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. *See id.* § 51.02(2). Upon review, we find incident report numbers 08-2437, 08-3114, 08-3310, 09-1516, 09-4445, and 09-6736 involve allegations of juveniles engaged in delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to these reports. Therefore, these reports, which we have marked, are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. We note, however, the remaining incident reports you seek to withhold under section 58.007 involve suspects who were seventeen years old. Therefore, the department may not withhold any of the remaining incident reports on the basis of section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides in pertinent part:

(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.

Id. § 261.201(a). We note incident report number 08-5404 pertains to an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining "child" for purposes of section 21.11 as a minor younger than 17 years of age). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Accordingly, we find the department must withhold incident report number 08-5404 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969).

The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You seek to withhold the information you have marked on the document numbered 112 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have not identified any violation, nor have you explained whether the violation carries civil or criminal penalties. Thus, we conclude the department has not demonstrated the applicability of the common-law informer's privilege to the information you seek to withhold. Accordingly, the department may not withhold any portion of the information at issue under section 552.101 in conjunction with the informer's privilege.

Section 552.101 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. Upon review, we find a portion of the remaining information, which we have marked, is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You state you will redact the information you have marked under section 552.130 pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009). As stated previously, Open Records Decision No. 684 authorizes the withholding of ten categories of information, including a Texas driver's license number and license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. In this instance, some of the information you have marked under section 552.130 consists of vehicle identification numbers, out-of-state motor vehicle record information, and the driver's license issuing state. We note the department is not authorized to withhold these types of information pursuant to Open Records Decision No. 684. Additionally, we note the remaining information includes additional Texas driver's license numbers, as well as other Texas motor vehicle record information subject to section 552.130. Therefore, we will address the applicability of

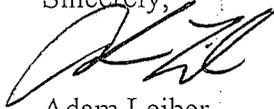
section 552.130 to the information at issue.⁶ Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Thus, we find section 552.130 is applicable to some of the information at issue. However, we note section 552.130 does not apply to out-of-state motor vehicle record information. Further, we find the driver's license issuing state you have marked does not constitute motor vehicle record information for purposes of section 552.130. Accordingly, the department must withhold only the Texas driver's license numbers and Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold incident report numbers 08-2437, 08-3114, 08-3310, 09-1516, 09-4445, and 09-6736 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold incident report number 08-5404 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. 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, 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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

⁶The Office of the Attorney General will raise a mandatory exception, such as section 552.130, 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# 381461

Enc. Submitted documents

cc: Requestor
(w/o enclosures)