



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 20, 2010

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2010-12709

Dear Mr. Lestock:

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# 389606.

The Paris Fire Department and the Paris City Attorney's Office (collectively, the "city") each received a request for information pertaining to a specified fire on the property of the requestor's clients. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.¹ 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).

Initially, the requestor claims, and you acknowledge, some of the requested information has previously been released to the insurance company of the requestor's clients.² You state portions of the requested information were released by the city "pursuant to section 2001.006 of the Texas Insurance Code." Section 2001.006 provides, in relevant part, as follows:

(a) The state fire marshal, a fire marshal of a political subdivision of this state, the chief of a fire department in this state, or a peace officer in this state

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

²Although you also assert a plastic ride-on battery operated toy car was released to a specified third party, we note tangible items are not "information" within the Act. *See, e.g.,* Open Records Decision No. 581 (1990). Thus, such tangible physical evidence is not public information, and the city is not required to release it to the requestor in response to the present request. *See* Gov't Code §§ 552.002, .021.

may request an insurer investigating a fire loss of property in which damages or losses exceed \$1,000 to release information in the insurer's possession relating to that loss. The insurer shall release the requested information and cooperate with the official. The requested information may include only:

- (1) an insurance policy relevant to the fire loss under investigation and any application for a policy;
- (2) policy premium payment records;
- (3) the history of the insured's previous claims for fire loss; and
- (4) material relating to the investigation of the loss, including:
 - (A) statements of any person;
 - (B) proof of loss; or
 - (C) other relevant evidence.

Ins. Code § 2001.006(a). By its express terms, section 2001.006 only states an insurer must release certain information to specified individuals, including a fire marshal of a political subdivision of Texas. Section 2001.006 does not provide for the release of information by the city to any person, including an insurer. Further, you do not provide, and we are not aware of, any law that provides for release of the information to the public, including an insurer. Accordingly, we note the Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987).

Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). *But see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to section 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to section 552.108). Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. You indicate the city will release a portion of the previously released information to the current requestor. You seek to withhold the remaining previously released information under sections 552.101 and 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory

predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Therefore, the city may not withhold from the present requestor any portion of the previously released information under section 552.108. You also contend portions of the information at issue must be withheld under section 552.101 of the Government Code, which makes information confidential under law. Therefore, we will consider your argument under section 552.101 with respect to the information that has been previously released.

Next, we address your submitted arguments for the information that has not been previously released. We note the information at issue includes court-filed documents. Section 552.022 of the Government Code states, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The marked court-filed documents may be withheld only if they are confidential under other law. The city seeks to withhold the court-filed documents under section 552.108 of the Government Code. However, as noted above, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; ORDs 665 at 2 n.5 (discretionary exceptions generally), 177 at 3 (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the court-filed documents we have marked may not be withheld under section 552.108. Because section 552.101 of the Government Code is other law for purposes of section 552.022(a)(17), we will consider the applicability of this section to the court-filed documents.

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: (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). This office has held the arson investigation unit of a fire department is a law enforcement entity for purposes of section 552.108. *See Open Record Decision No. 127 (1976) (Arson Investigation Division of Dallas Fire Department deemed to be law enforcement agency for purposes of statutory predecessor to section 552.108)*. You state the submitted information relates to an ongoing criminal investigation of arson, and release of the information would

interfere with the detection and investigation of a crime. Based upon these representations, we conclude release of the remaining information not subject to section 552.022(a)(17) will 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. 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). Therefore, we find section 552.108(a)(1) of the Government Code is applicable in this instance.

However, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the court-filed documents, and the information that has been previously released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.³

Next, we address your argument for the previously released information and the court-filed documents. 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 made confidential by other statutes, such as section 2001.006 of the Insurance Code. As noted above, section 2001.006(a) authorizes a fire marshal of a political subdivision of Texas to request and receive certain information from an insurer who is investigating a fire loss of property in which damages or losses exceed \$1,000. *See* Ins. Code § 2001.006(a). Section 2001.006 further provides:

(c) An insurer that has reason to suspect that a fire loss to the property of a person insured by the insurer was caused by incendiary means and that receives a request for information under Subsection (a) shall:

- (1) notify the requesting official and provide the official with all relevant material acquired during the insurer's investigation of the fire loss;
- (2) cooperate with and take any action requested of the insurer by a law enforcement agency; and
- (3) permit a person ordered by a court to inspect any of the insurer's records relating to the insurance policy and the loss.

...

³As our ruling is dispositive with respect to this information, we need not address the remaining argument against its disclosure.

(e) An official or a department or agency employee who receives information under this section shall maintain the confidentiality of the information until the information is required to be released in a criminal or civil proceeding.

Id. § 2001.006(c), (e). Section 2001.006 makes confidential information received from an insurer by a state fire marshal, a fire marshal of a political subdivision of this state, the chief of a fire department of this state, or a peace officer in this state who requested such information under this section. You contend portions of the previously released information and court-filed documents are confidential under section 2001.006 of the Insurance Code because they were provided to the city's fire marshal by an insurer. We note, however, the information at issue consists of a written statement obtained by the city from the individual at issue and audio recordings, video recordings, photographs, and court-filed documents created by the city during its investigation. Thus, the information at issue was not received by the city's fire marshal from an insurer pursuant to a request under section 2001.006. Accordingly, we find section 2001.006 is not applicable to the information at issue, and the city may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find the information we have noted is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have noted under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, the court-filed documents, and any information that has been previously released to the public, including the insurance company, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. The city must withhold the information we have noted in the remaining

information under section 552.101 of the Government Code in conjunction with common-law privacy.⁴ 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 389606

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a person other than the requestor or his clients, it should again seek a ruling from this office. See Gov't Code §§ 552.301, .302.