



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2010

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-13123

Dear Ms. McClellan:

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# 391828 (DPD ORR# 2010-5358).

The Dallas Police Department (the "department") received a request for all records and reports of police activity at a specified address for a specified period of time.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, 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,

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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. Upon review, we find service number 0167635-W involves conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). You do not inform us, and it does not appear, that any of the exceptions in section 58.007 apply to this information. Therefore, the department must withhold service number 0167635-W under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 261.201 of the Family Code. Section 261.201 provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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 service number 0023319-X was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” 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). Therefore, this report falls within the scope of section 261.201(a). As you do not state that the department has adopted a rule that governs the release of this type of information, we assume that none exists. Given that assumption, we conclude service number 0023319-X is confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). Therefore, the department must withhold this report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). However, section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Accordingly, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses information chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *Id.* at 2.

Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone numbers of 9-1-1 callers that the department seeks to withhold. We conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code to the extent it was furnished by a 9-1-1 service supplier. If the marked telephone numbers were not provided by a 9-1-1 service supplier, the marked information may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 of the Government Code also incorporates 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered 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. *Id.* at 683. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold this information under section 552.101 in conjunction with common-law privacy. However, the remaining information is either not highly intimate or embarrassing or is of legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

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 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 service number 0114287-X relates to a pending case and that release of the report would hinder the

criminal investigation and prosecution of the case. Based on this representation, we conclude that section 552.108(a)(1) is applicable to service number 0114287-X. 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. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that 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* and includes the identity of the complainant and a detailed description of the offense. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold service number 0114287-X under section 552.108(a)(1) of the Government Code.

You have marked Texas driver's license numbers, license plate numbers, and vehicle identification numbers in the remaining information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or personal identification document issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1)-(3). Accordingly, the department must withhold the information you have marked under section 552.130.²

Finally, you claim the social security numbers in the remaining information are excepted from disclosure under section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, the department may withhold the social security numbers in the remaining information under section 552.147.³

In summary, the department must withhold service number 0167635-W under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold service number 0023319-X under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the telephone numbers you have marked under section 552.101

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 and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note 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.

of the Government Code in conjunction with section 772.318 of the Health and Safety Code to the extent they were furnished by a 9-1-1 service supplier. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold service number 0114287-X under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The department may withhold the social security numbers in the remaining information under section 552.147 of the Government Code. 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/em

Ref: ID# 391828

Enc. Submitted documents

c: Requestor
(w/o enclosures)