



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2011

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-00962

Dear Ms. Benton:

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# 407233 (LGL-10-1562).

The City of Waco (the "city") received a request for all 911 calls for service and the reports generated from each for a specified address from January 1, 2009 to November 1, 2010. 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.

Section 552.101 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. Section 261.201(a) of the Family Code provides as follows:

(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.

Fam. Code § 261.201(a). You seek to withhold the entirety of reports nos. 09-27033 and 10-8680 under section 261.201(a) of the Family Code. Because we find report no. 10-8680 was used or developed in an investigation of child abuse, the report is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code ch. 261); *see also* Penal Code § 22.011(c) (defining “child” for purposes of section 21.02 of the Penal Code as person younger than 17 years of age). You have not indicated the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find report no. 10-8680 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, you have failed to demonstrate report no. 09-27033 was used or developed in an investigation of child abuse or neglect under Chapter 261 of the Family Code. *See* Fam. Code § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we find report no. 09-27033 is not confidential pursuant to section 261.201 of the Family Code. Accordingly, the city must withhold report no. 10-8680 from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

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 report no. 10-14661 pertains to a pending criminal investigation. Based on this representation and our review, we conclude the release of the information you have marked 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. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find the city may withhold the information you have marked in report no. 10-14661 under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]”

¹Because section 552.101 is dispositive, we need not address your claim under section 552.108 for report no. 10-8680.

Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report nos. 09-4787 and 09-27033 pertain to closed investigations that did not result in conviction or deferred adjudication. Upon review, we agree section 552.108(a)(2) is applicable to report nos. 09-4787 and 09-27033.

We 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 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). Accordingly, except for the basic information, the city may withhold report nos. 09-4787 and 09-27033 under section 552.108(a)(2) of the Government Code.² However, you seek to withhold the basic information in report no. 09-27033 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (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 highly 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, with respect to incident report no. 09-27033, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the basic information must be withheld on the basis of common-law privacy. We note the type of offense and portions of the detailed description of the offense within the basic information of incident report no. 09-27033 is highly intimate or embarrassing and of no legitimate public concern. Therefore, the city must withhold the type of information we have marked in incident report no. 09-27033 when releasing a detailed description of the offense under section 552.101 in conjunction with common-law privacy.

²As our ruling is dispositive, we need not address your claim under section 552.101 of the Government Code for report no. 09-4787.

You have marked Texas motor vehicle record information in the remaining information in report no. 10-14661. Section 552.130 of the Government Code provides 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). Accordingly, the city must withhold the Texas motor vehicle record information you and we have marked in the remaining information in report no. 10-14661 under section 552.130.³

In summary, the city must withhold report no. 10-8680 from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city may withhold the information you have marked in report no. 10-14661 under section 552.108(a)(1) of the Government Code. Except for the basic information, the city may withhold report nos. 09-4787 and 09-27033 under section 552.108(a)(2) of the Government Code. In releasing the basic information for report no. 09-27033, the city must withhold the type of information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the Texas motor vehicle record information you and we have marked in the remaining information in report no. 10-14661 under section 552.130.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/vb

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

Ref: ID# 407233

Enc. Submitted documents

c: Requestor
(w/o enclosures)