



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2011

Ms. Tiffany Bull
Assistant Police Legal Advisor
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2011-15974

Dear Ms. Bull:

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# 434643-11 (Police Department Reference No. 5005-081811).

The Arlington Police Department (the "department") received a request for "all crime reports for the Arlington Hilton [H]otel [at] 2401 E. Lamar Blvd over the past year- time period being 08/17/10 through 08/17/11." You state you have released some information to the requestor. You claim the submitted information, which you identify as exhibits B, C, and D, 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 of the Government Code excepts from required public disclosure information made confidential by law, including information made confidential by statute. You assert section 58.007(c) of the Family Code makes confidential the information in exhibit C. Section 58.007(c) reads in relevant part 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

(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). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). It does not appear that any of the exceptions in section 58.007 apply in this case. Upon review, we agree exhibit C is confidential under section 58.007(c). Therefore, the department must withhold the information in exhibit C under section 552.101 of the Government Code.

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. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *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, you have not demonstrated, nor does the request reveal, that the requestor knows the identity of the individuals in the submitted reports. Therefore, the reports are not private in their entirety.

One of the submitted police reports pertains to an alleged sexual assault and uses a pseudonym to identify the alleged victim. The identity of an alleged sexual assault victim is protected by common-law privacy under section 552.101. *See Open Records Decision Nos. 393 (1983), 339 (1982)*. We find the use of the pseudonym sufficiently protects the victim’s privacy in this case. Thus, the department may not withhold any information in this report on privacy grounds.

For the other report, we find the report includes highly intimate and embarrassing information in which the public does not have a legitimate interest. We have marked the private information accordingly. The department must withhold this marked information

based on section 552.101 in conjunction with common-law privacy. We find the remaining information in this report is not private. Thus, the department may not withhold any of the remaining information on privacy grounds.

You assert section 552.108(a)(1) of the Government Code applies to the information in exhibit B. Section 552.108(a) 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.” 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* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the offense reports in exhibit B relate to pending criminal investigations. Based on this representation, we conclude that the release of the offense reports 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).

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 Publishing Co.*, 531 S.W.2d 177. Thus, with the exception of the basic front page offense and arrest information, you may withhold the reports in exhibit B from disclosure based on section 552.108(a)(1).

The information at issue also includes other confidential information.¹ Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The department must withhold the motor vehicle record information we have marked under section 552.130.

In summary, with the exception of the basic information, which the department must release, the department may withhold exhibit B based on section 552.108(a)(1). The department must withhold exhibit C based on section 552.101 in conjunction with section 58.007(c) of the Family Code. The department must withhold the marked information in exhibit D based on section 552.101 in conjunction with the common-law right to privacy. The department must withhold the marked information based on section 552.130. The department must release the remaining information to the requestor.²

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/KH/sdk

Ref: ID# 434643

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The submitted information includes social security numbers. 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.