



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-16264

Dear Ms. Byles:

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# 435372 (Fort Worth PIR No. W0111067).

The City of Fort Worth (the "city") received a request for all police reports filed against the requestor by a named individual. You state the city has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note you seek to withhold information relating to 9-1-1 callers. In Open Records Letter Nos. 2011-15956 (2011) and 2011-15641 (2011), this office issued previous determinations to the city authorizing the city to withhold originating addresses and telephone numbers of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code, respectively, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision from this office. *See Gov't Code § 552.301(a)*; Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You state the information you have marked in the submitted incident detail report is the originating address and telephone number of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772. As such, the city must withhold the marked address and telephone number in accordance with

the previous determinations issued to the city in Open Records Letter Nos. 2011-15956 and 2011-15641.

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 the common-law right of privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type 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. Incident report number 00590889 contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. 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. However, we note the requestor is the person whose privacy rights would be implicated and would require the city to withhold the entire report. Section 552.023 provides that “[a] person . . . has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code, and the city may not withhold report number 00590889 in its entirety from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

This office has found that 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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find some of the information within incident report number 00590889 that you seek to withhold is highly intimate or embarrassing, is not of legitimate public concern, and implicates the privacy interests of a person other than the requestor. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Because the remaining information you have marked implicates the privacy interests of the requestor, the city may not withhold any of the remaining information on this basis. *See* Gov’t Code § 552.023(a)-(b); *see also* ORD 481 at 4.

Section 552.108(a) 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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide supporting documentation from the Fort Worth Police Department (the “department”) representing, that report number 11-81980 is related to a pending criminal investigation by the department and possible prosecution by the Tarrant County District Attorney’s Office. Based on your representation and documentation and our review, we conclude that release of report number 11-81980 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, section 552.108(a)(1) is applicable to report number 11-81980.

We note, 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 the types of information considered to be basic information). Thus, with the exception of the basic front-page information, the city may withhold report number 11-81980 based on section 552.108(a)(1) of the Government Code.¹

You also claim section 552.130 of the Government Code for portions of the remaining information in report number 00590889. Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit, or a motor vehicle title or registration issued by an agency of Texas, another state, or country is excepted from public release. 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(a)). We note section 552.130 protects personal privacy. As noted above, the requestor has a right of access to her own private information. *See* Gov’t Code § 552.023; ORD 481 at 4. Thus, the city may not withhold the requestor’s driver’s license number you have marked in this instance under section 552.130.

In summary, the city must withhold the marked address and telephone number in accordance with the previous determinations issued to the city in Open Records Letter Nos. 2011-15956 and 2011-15641. The city must withhold the information we have marked in report

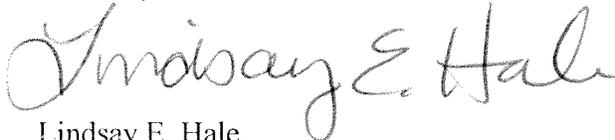
¹As our ruling is dispositive, we need not address your remaining argument for report number 11-81980, except to note that basic information described in *Houston Chronicle* does not include information subject to section 552.130. *See* 531 S.W.2d at 186-88.

number 00590889 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, the city may withhold report number 11-81980 under section 552.108(a)(1) of the Government Code. The city 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 435372

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a right of access under section 552.023 of the Government Code to some of the information being released, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office. *See* Gov't Code §§ 552.023(a), .301, .302.