



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2012

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-01924

Dear Ms. Pemberton:

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# 444977 (Killeen ID# W006795).

The City of Killeen (the "city") received a request for information relating to the seizure and placement of the requestor's dogs. You state you have released some of the requested information. You claim that 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 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 protected by other statutes. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007 provides in relevant part:

(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.

Id. § 58.007(c). For purposes of section 58.007(c), a “child” is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree that Call for Service Reports 1288330, 1288289, and 1290064 involve a child engaged in delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Therefore, we find that Call for Service Report Nos. 1288330, 1288289, and 1290064 are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law 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 highly 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.

Call for Service Report Nos. 1285168 and 1286066 relate to sexual assaults. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment

was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). We note that the requestor in this case knows the identity of the alleged victim in some of the submitted information. Accordingly, we believe that withholding only identifying information from the requestor in those cases would not preserve the victims' common-law right to privacy. We conclude, therefore, that pursuant to section 552.101 in conjunction with common-law privacy, the city must withhold Call for Service Report Nos. 1285168 and 1286066 in their entirety. We note the city also must withhold the information we have marked in Call for Service Report No. 1222220 under section 552.101 in conjunction with common-law privacy.

Next, you assert that Call for Service Report Nos. 1211532, 1212084, 1225236, 1281821, 1283677, and 1225184 contain information that is protected by common-law privacy. Upon review, however, we find that while Call for Service Report Nos. 1211532, 1212084, and 1225236 contain information that would ordinarily be protected by common-law privacy, the requestor is the individual whose privacy interests are at issue. Accordingly, the requestor has a special right of access under section 552.023 of the Government Code to the information. *See* Gov't Code § 552.023 (person has a special right of access to information excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Additionally, we find Call for Service Report Nos. 1281821, 1283677, and 1225184 do not contain any information that is highly intimate or embarrassing and of no legitimate public interest. Therefore, Call for Service Report Nos. 1211532, 1212084, 1225236, 1281821, 1283677, and 1225184 may not be withheld from this requestor under section 552.101 in conjunction with common-law privacy.

You also seek to withhold the names, addresses, phone numbers, and e-mail addresses of individuals listed in the Animal Control "screen shots" and e-mail correspondence under common-law privacy. We note that this is not the type of information that has been found to be highly intimate or embarrassing and of no legitimate public concern. *See* Open Records Decision Nos. 554 at 3 (1990) (public disclosure of an individual's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Therefore, the city may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does

not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You seek to withhold the informers' identifying information in the submitted information under the common-law informer's privilege. You state information in Call for Service Report No. 1180600 and Animal Control Activity Card Nos. A10-030644-1, A11-033321-1, A110339761, A11-034143-1, and A11-034632-1 reveals the identity of complainants who reported possible violations of the city's ordinances to city officials. There is no indication the subject of the complaint knows the identity of the complainants. Based on your representation and our review, we conclude the city may withhold the complainants' identifying information in Call for Service Report No. 1180600 and Animal Control Activity Card Nos. A10-030644-1, A11-033321-1, A110339761, A11-034143-1, and A11-034632-1, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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). 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). You state that Call for Service Report Nos. 1210857, 1201185, and 122090, and Animal Control Activity Card Nos. A11-03560-1, A11-036177-1, and A11-032915-1 relate to a pending criminal prosecution. You state the County Attorney's office asserts that release of this information would jeopardize their prosecution of the case, and therefore, they object to the release. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of Call for Service Report Nos. 1210857, 1201185, and 122090, and Animal Control Activity Card Nos. A11-03560-1, A11-036177-1, and A11-032915-1 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*. See 531 S.W.2d at 186-88. Thus,

with the exception of the basic front page offense and arrest information, you may withhold Call for Service Report Nos. 1210857, 1201185, and 122090, and Animal Control Activity Card Nos. A11-03560-1, A11-036177-1, and A11-032915-1 from disclosure based on section 552.108(a)(1).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.¹

In summary, Call for Service Report Nos. 1288330, 1288289, and 1290064 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, the city must withhold Call for Service Report Nos. 1285168 and 1286066 in their entirety, and the information we have marked in Call for Service Report No. 1222220. The city may withhold the complainants’ identifying information in Call for Service Report No. 1180600 and Animal Control Activity Card Nos. A10-030644-1, A11-033321-1, A110339761, A11-034143-1, and A11-034632-1, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Except for basic information, Call for Service Report Nos. 1210857, 1201185, and 122090, and Animal Control Activity Card Nos. A11-03560-1, A11-036177-1, and A11-032915-1 may be withheld under section 552.108 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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

¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

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,

A handwritten signature in black ink, reading "Kathryn R. Mattingly". The signature is written in a cursive style with a large, looping "y" at the end.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/som

Ref: ID# 444977

Enc. Submitted documents

c: Requestor
(w/o enclosures)