



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2012

Ms. Elizabeth L. White
For City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2012-02042

Dear Ms. White:

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# 445020 (PIR# 11-1706).

The City of League City (the "city"), which you represent, received a request for all records pertaining to the requestor, including any juvenile records and traffic tickets. You state you will release some of the requested information. You also state you will redact driver's license and license plate numbers under section 552.130 of the Government Code.¹ You claim that the requested information is excepted from disclosure under

¹We 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 Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, we note Open Records Decision No. 684 does not authorize the city to redact the vehicle identification numbers you have marked under section 552.130 without requesting a decision. We also note that on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

(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.

Fam. Code § 261.201(a). We find that Exhibit A4 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). As you do not indicate that the city has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore conclude that Exhibit A4 is confidential under section 261.201(a). Accordingly, Exhibit A4 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³

²We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we do not address your remaining arguments against disclosure for this information.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. *Id.* § 58.007(c). Section 58.007 provides in 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). *See also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and younger than seventeen years of age). Upon review, we find Exhibits A1 and A2 involve delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). Therefore, the

information at issue is subject to section 58.007. In this instance, the requestor is one of the juvenile offenders listed in the reports; as such, he has a right of access to the information at issue. *Id.* § 58.007(e). However, personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007 of the Family Code. *See id.* § 58.007(j)(1). Thus, the city must withhold the identifying information of other juvenile offenders, which we have marked, under section 58.007(j)(1) of the Family Code. Additionally, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments against disclosure of this and the remaining information under sections 552.101, 552.103, and 552.108 of the Government Code.

Section 552.108(a)(1) 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). Generally, a governmental body claiming section 552.108(a)(1) 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 the information in Exhibits A5 and A6 relate to pending criminal investigations. Based upon your representation and our review, we conclude that the release of Exhibits A5 and A6 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 these exhibits.

Next, you claim Exhibits A2 and A3 are excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibits A2 and A3 pertain to investigations by the city’s police department that have concluded and that did not result in convictions or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to Exhibits A2 and A3.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the identifying

information of the complainant. Thus, with the exception of basic information, the city may withhold Exhibits A5 and A6 under section 552.108(a)(1) of the Government Code and Exhibits A2 and A3 under section 552.108(a)(2) of the Government Code.⁴

Section 552.101 also encompasses 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 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000, and section 772.118 is applicable to a county with a population of more than two million.

We understand the city is part of two emergency communication districts established under chapter 772. Although you seek to withhold the “identifying information” of the 9-1-1 callers in Exhibits A1 and A2, we note chapter 772 only applies to the originating telephone numbers and addresses of 9-1-1 callers. Upon review, we find you have failed to demonstrate how any of the remaining information at issue consists of telephone numbers or addresses furnished by a 9-1-1 service provider. Consequently, none of the remaining information at issue may be withheld under chapter 772 of the Health and Safety Code.

Next, the city generally raises section 552.101 of the Government Code for the victim identifying information found in Exhibits A5, A6, and A7. However, the city does not cite to any specific law, and we are not aware of any, that makes any portion of the submitted information confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating information shall not be released to public). Therefore, we conclude the city may not withhold any of the victim identifying information at issue under section 552.101 of the Government Code.

Next, you seek to withhold portions of Exhibit A1 and portions of the basic information for Exhibits A2 and A3 under the common-law informer’s privilege. Section 552.101 also encompasses the common-law informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. *See* Open

⁴As our ruling is dispositive, we need not address your argument under section 552.103 of the Government Code for Exhibits A5 and A6, except to note that basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The 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.” See 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. The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. See Open Records Decision No. 549 at 5 (1990).

You seek to withhold the information you have marked in Exhibit A1 and in the basic information of Exhibits A2 and A3, which identifies individuals who you state provided information concerning possible criminal violations to the city’s police department. You state these alleged violations carry civil or criminal penalties. You do not indicate, nor does it appear, the subjects of the complaints know the identities of the complainants. Based on your representation and our review, we conclude the city may withhold the complainants’ identifying information, which we have marked in the information at issue, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find no portion of the remaining information at issue identifies or tends to identify the complainants. Accordingly, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with the informer’s privilege.

In summary, the city must withhold Exhibit A4 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the identifying information of other juvenile offenders, which we have marked in Exhibit A1, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. With the exception of basic information, the city may withhold Exhibits A5 and A6 under section 552.108(a)(1) of the Government Code and Exhibits A2 and A3 under section 552.108(a)(2) of the Government Code. The city may also withhold the information we have marked in Exhibit A1 and the information we have marked in the basic information for Exhibits A2 and A3 under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The remaining information must be released to this requestor.⁵

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.

⁵We note that the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 445020

Enc. Submitted documents

c: Requestor
(w/o enclosures)