



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 10, 2012

Mr. Whitt L. Wyatt  
Assistant City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2012-05156

Dear Mr. Wyatt:

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# 449903 (File No. 12-064).

The Richardson Police Department (the "department") received a request for all incident reports involving a specified location during a specified time period. You state you have released some information to the requestor. You state you have redacted social security numbers under section 552.147 of the Government Code.<sup>1</sup> We note you have also redacted certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup>

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<sup>1</sup>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. Gov't Code § 552.147(b).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including access device numbers under section 552.136 of the Government Code and e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-04965 (2012). In Open Records Letter No. 2012-04965, we determined the department must release court-filed documents pursuant to section 552.022(a)(17) of the Government Code and, with the exception of basic information, may withhold report numbers 201200000554 and 201200001386 under section 552.108(a)(1) of the Government Code and report number 201200000594 under section 552.108(a)(2) of the Government Code. You indicate there has been no change in the law, facts, or circumstances with respect to report numbers 201200000554 and 201200001386 since the issuance of the previous ruling. Accordingly, we conclude the department must rely on Open Records Letter No. 2012-04965 as a previous determination and withhold or release report numbers 201200000554 and 201200001386 in accordance with that ruling.<sup>3</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, in response to the present request, you argue a different subsection of section 552.108 of the Government Code applies to report number 201200000594. Thus, the circumstances for report number 201200000594 have changed. Accordingly, we will consider your submitted argument against disclosure of report number 201200000594. We will also address your arguments against disclosure of the information not encompassed by the previous ruling.

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 that other statutes make confidential, such as section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *see also* Fam. Code §§ 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct), .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,

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<sup>3</sup>As our determination is dispositive, we need not address your arguments against disclosure of this information.

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 Subchapter B, D, and E.

Fam. Code § 58.007(c). Report numbers 201100000782, 201100006684, and 201100114619 consist of law enforcement records that involve juveniles engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Furthermore, it does not appear that any of the exceptions in section 58.007 apply in this instance. Accordingly, report numbers 201100000782, 201100006684, and 201100114619 are confidential under section 58.007 of the Family Code, and the department must withhold these reports in their entirety under section 552.101 of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

*Id.* § 261.201(a). We find report number 200700037470 was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code, so as to fall

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code sections 21.11); *see also* Penal Code § 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person younger than 17 years of age). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude the department must withhold report number 200700037470 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>5</sup> *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.108 of the Government Code provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov’t Code § 552.108(a)(1)-(2). Generally, subsections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive. Subsection 552.108(a)(1) protects information the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. 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 remaining information relates to pending criminal investigations. Based on this representation and our review, with the exception of report numbers 200700000948, 200700004254, 200700004802, 200800121472, 200800121916, 200900099744, 200900117607, 201000002230, and 201200000594 we conclude the release of the remaining 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976).

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Accordingly, with the exception of the nine reports we have marked, we find section 552.108(a)(1) is applicable to the remaining reports.

However, in response to the previous request for information that encompassed report number 201200000594, you raised subsection 552.108(a)(2) of the Government Code for this report and informed this office the information at issue pertained to a concluded investigation. As noted above, in response to your prior request for a ruling this office issued Open Records Letter No. 2011-04965, which held with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code. In raising subsection 552.108(a)(1), you have provided no additional arguments explaining how the information at issue, which you previously described as relating to a concluded case, now relates to an ongoing criminal investigation. Because of your contradictory representations, we find you have failed to sufficiently demonstrate the applicability of section 552.108(a)(1) to report number 201200000594. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Consequently, the department may not now withhold report number 201200000594 under section 552.108 of the Government Code.

We note the remaining eight reports you argue involve ongoing criminal investigations relate to offenses for which the statute of limitations period has run. Report number 200700004254 relates to a robbery that occurred on January 17, 2007. The longest possible statute of limitations for this offense is five years. *See* Penal Code § 29.02 (robbery is a felony); *see also* Crim. Proc. Code art. 12.01 (indictment or information for robbery must be brought within five years). Report number 200800121916 relates to criminal mischief which occurred on December 30, 2008. The longest possible statute of limitations for this offense is three years. *See* Penal Code § 28.03(b)(4)(A) (criminal mischief is a felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000); *see also* Crim. Proc. Code art. 12.01 (all other felonies subject to three year limitations period). Report numbers 200700004802 and 201000002230 relate to burglary of a vehicle offenses that occurred on January 19, 2007 and January 8, 2010, respectively. The longest possible statute of limitations for these offenses is two years. *See* Penal Code § 30.04 (burglary of a vehicle is a Class A misdemeanor); *see also* Crim. Proc. Code art. 12.01 (an indictment or information for a misdemeanor must be brought within two years). Report numbers 200800121472, 200900099744, 200900117607 relate to criminal mischief offenses which occurred on December 29, 2008, October 19, 2009, and December 19, 2009, respectively. The longest possible statute of limitations for these offenses is two years. *See* Penal Code § 28.03(b)(2)-(3) (criminal mischief is a Class B misdemeanor if the amount of pecuniary loss is \$50 or more but less than \$500 and a Class A misdemeanor if the amount of pecuniary loss is \$500 or more but less than \$1,500); *see also* Crim. Proc. Code art. 12.01 (an indictment or information for a misdemeanor must be brought within two years). Report number 200700000948 relates to a "Class C assault" which occurred on January 4, 2007. This offense also has a limitations period of two years. *See* Penal Code § 22.01(c); *see also* Crim. Proc. Code art. 12.02. You have not informed this office any criminal charges were filed within the limitations period for any of these cases. Furthermore, you have not

otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of a crime. Thus, the reports at issue may not be withheld under section 552.108(a)(1).

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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information subject to section 552.130 of the Government Code. Thus, with the exception of report numbers 200700000948, 200700004254, 200700004802, 200800121472, 200800121916, 200900099744, 200900117607, 201000002230, and 201200000594 and basic information, the department may withhold the remaining reports under section 552.108(a)(1) of the Government Code.<sup>6</sup>

Section 552.103 of the Government Code provides, in part, as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. See *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You state report number 200700004254 relates to a case the department intends to file or has filed with the City of Richardson Municipal Court. As previously noted, report number 200700004254 relates to a robbery that occurred on January 17, 2007, the statute of limitations for which is five years. *See* Penal Code § 29.02 (robbery is a felony); *see also* Crim. Proc. Code art. 12.01 (indictment or information for robbery must be brought within five years). You have not explained, and the report does not reflect, any criminal charges were filed within the limitations period for this case. Further, you do not explain how the department will be, or is, a party to any criminal prosecution. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). In such a situation, we require an affirmative representation from the governmental body with the litigation interest, such as a district attorney or local prosecutor, requesting to withhold the information from disclosure under section 552.103. You have not provided such a representation. Therefore, we determine the department has failed to demonstrate litigation was reasonably anticipated or pending when the department received the request for information. *See* Gov't Code 552.103(c) (litigation must be pending or reasonably anticipated at the time the governmental body receives the request for information). Thus, the department may not withhold report number 200700004254 under section 552.103 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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 types 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. Upon review, we find the information we have

marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

The department has redacted some driver's license numbers, license plate numbers, a copy of a driver's license, and vehicle identification numbers under section 552.130 of the Government Code in accordance with Open Records Decision No. 684. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas, another state, or country is excepted from public release. Gov't Code § 552.130(a). 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), such as driver's license numbers and a copy of a driver's license, without the necessity of seeking a decision from the attorney general. *See id.* § 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). Thus, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130. However, license plate numbers and vehicle identification numbers are subject to subsection 552.130(a)(2), not subsections 552.130(a)(1) or (a)(3); therefore, these types of information may not be redacted under subsection 552.130(c). We note Open Records Decision No. 684 (2009) is 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, Open Records Decision No. 684 also does not authorize the department to redact the vehicle identification numbers you have marked under section 552.130 without requesting a ruling from this office. We note the remaining information includes information subject to section 552.130. The department must withhold the information you have redacted, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold or release report numbers 201200000554 and 201200001386 in accordance with Open Records Letter No. 2012-04965. The department must withhold report numbers 201100000782, 201100006684, and 201100114619 in their entirety under section 552.101 of the Government Code in conjunction section 58.007 of the Family, and report number 200700037470 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of report numbers 200700000948, 200700004254, 200700004802, 200800121472, 200800121916, 200900099744, 200900117607, 201000002230, and 201200000594 and basic information, the department may withhold the remaining reports under section 552.108(a)(1) of the Government Code. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have redacted, as well as the information we have marked, under section 552.130 of the Government Code. The department must release the remaining information.

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](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 cursive script that reads "Jennifer Burnett". The signature is written in black ink and is positioned above the typed name.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 450041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)