



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 20, 2012

Ms. Lisa D. Mares  
Taylor Olson Adkins Sralla Elam  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2012-09495

Dear Ms. Mares:

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# 456910.

The Weatherford Police Department (the "department"), which you represent, received a request for all victim statements related to indecent exposure or criminal trespassing cases during a specified period.<sup>1</sup> You state the department will redact some information pursuant to sections 552.130 and 552.147 of the Government Code.<sup>2</sup> You claim 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.

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<sup>1</sup>We note the department sought and received clarification of the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). See also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Section 552.130(c) of the Government Code permits a governmental body to redact information subject to subsections 552.130(a)(1) and 552.130(a)(3) without the necessity of seeking a ruling from this office. See Gov't Code § 552.130(c)-(e). Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living person without seeking a ruling from this office. See *id.* § 552.147(b).

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 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. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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). *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 you have failed to demonstrate the information submitted as Exhibit C is subject to section 58.007 of the Family Code. Accordingly, the department may not withhold Exhibit C under section 552.101 of the Government Code on that basis.

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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are protected by 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 the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not highly intimate

or embarrassing and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108 of the Government Code provides, in 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 deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

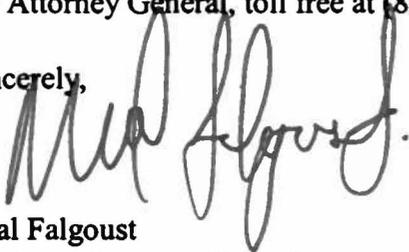
Gov't Code § 552.108(a)(1)–(2). Section 552.108(a)(1) protects law enforcement records pertaining to a pending criminal investigation or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information fits within the claimed exception. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information submitted as Exhibit D-1 relates to a pending criminal investigation and prosecution and its release would interfere with the detection, investigation, or prosecution of a crime. Accordingly, we conclude the department may withhold Exhibit D-1 under section 552.108(a)(1) of the Government Code. You state the information submitted as Exhibit D-2 relates to an investigation that resulted in an outcome other than conviction or deferred adjudication. Accordingly, we conclude the department may withhold Exhibit D-2 under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold Exhibit D-1 under section 552.108(a)(1) of the Government Code and Exhibit D-2 under section 552.108(a)(2) of the Government Code. 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 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 black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large, prominent initial "N".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 456910

Enc. Submitted documents

c: Requestor  
(w/o enclosures)