



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2012

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

OR2012-10402

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# 458297 (File No. 3607-1; PIR 1965).

The City of League City (the "city"), which you represent, received a request for (1) the full reports pertaining to six specified event numbers, and (2) all service calls related to a specified address. You inform us that the city will release some information responsive to item one of the request. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to item two of the request. To the extent the city maintains information responsive to this part of the request that existed on the date the request was received, we assume it has been released. If the city has not released any such information, it must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

¹Although you also raise section 552.023 of the Government Code, we note this section is not an exception to disclosure under the Act. *See Gov't Code § 552.023.*

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which 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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007, “child” means a person who is 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 find Exhibit A5 involves delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. However, we are unable to determine whether the alleged suspect identified in Exhibit A5 was ten years of age or older and under seventeen years of age when the conduct occurred. Therefore, we must rule conditionally. If the suspect at issue was ten years of age or older and under seventeen years of age at the time of the incident, Exhibit A5 is confidential in its entirety pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code. Otherwise, section 58.007 is not applicable to Exhibit A5 and it may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c). For that situation, we will consider your arguments against disclosure of this information.

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You inform us that Exhibits A1 through A6 relate to criminal investigations that were conducted by the city's police department and did not result in a convictions or deferred adjudications. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to these exhibits.

We note 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes, among other items of information, the property involved and a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-87; ORD 127 at 3-4. However, basic information does not include motor vehicle record information subject to section 552.130 of the Government Code or the identifying information of witnesses. *See* Gov't Code § 552.130; ORD 127 at 3-4. Accordingly, with the exception of basic information, which includes detailed descriptions of the offenses, and which you inform us will be released, the city may withhold Exhibits A1 through A6 under section 552.108(a)(2) of the Government Code.²

We understand you to claim the basic information in Exhibits A-1 and A-4 through A-6 is protected by common-law privacy. 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. *See 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. *See 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. *See id.* at 683. Generally, only highly intimate information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual's privacy.

²As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

In this instance, you have not demonstrated, nor does it otherwise appear, this is a situation in which any of the information at issue must be withheld in its entirety on the basis of common-law privacy. However, upon review, we agree that portions of the basic information in Exhibit A6 are highly intimate or embarrassing and of no legitimate public concern. Accordingly, in releasing basic information, the city must withhold the information we have marked in Exhibit A-6 under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

You also claim the common-law informer's privilege for some of the remaining basic information in Exhibit A-6. 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. *See 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*. The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

In this instance, you do not inform us what criminal or civil statute was reported to be violated, nor have you explained how the city is responsible for enforcing any such statute. Furthermore, we find none of the information at issue identifies an informer for purposes of the common-law informer's privilege. We therefore conclude the city has failed to demonstrate the applicability of the common-law informer's privilege to any of the basic information in Exhibit A-6, and none of this information may be withheld under section 552.101 of the Government Code on that basis.

In summary, if the suspect at issue in Exhibit A5 was ten years of age or older and under seventeen years of age at the time of the incident, Exhibit A5 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Otherwise, section 58.007 is not applicable to Exhibit A5 and it may not be withheld under section 552.101 of the Government Code in conjunction with

section 58.007(c) of the Family Code. With the exception of basic information, which includes detailed descriptions of the offenses, and which you inform us will be released, the city may withhold Exhibits A1 through A6 under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the city must withhold the information we have marked in Exhibit A6 under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 458297

Enc. Submitted documents

c: Requestor
(w/o enclosures)