



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 24, 2012

Ms. Elizabeth L. White  
Counsel for the City of League City  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2012-11471

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# 459827 (File#No. 3607-1[PIR 2005]).

The League City Police Department (the "department"), which you represent, received a request for information pertaining to a specified address for a specified time period. You state the department will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>2</sup>

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,

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

<sup>2</sup>We assume the "representative samples" of information submitted to this office are 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 those records contain substantially different types of information than those submitted to this office.

including section 58.007 of the Family Code. Section 58.007 provides in pertinent 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.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct in need of supervision” for purposes of title 3 of the Family Code). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find event report 2011-271277 reflects allegations of juveniles engaged in delinquent conduct occurring after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, event report 2011-271277 is subject to section 58.007(c) and must be withheld in its entirety under section 552.101 of the Government Code.<sup>3</sup>

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. *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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state, and have provided documentation confirming, the information you have marked in report 11-3513 and event reports 2011-154406, 2011-331344, and 2012-121257 pertains to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on these

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

representations, we find section 552.108(a)(2) is generally applicable to the information at issue.

However, as you acknowledge, 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) and includes a detailed description of the offense and the identity of the complainant. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. Accordingly, with the exception of basic information, the department may withhold the remaining information you have marked pursuant to section 552.108(a)(2) of the Government Code.<sup>4</sup>

However, you claim the identities of the complainants in event reports 2011-331344 and 2012-121257 are protected under section 552.101 in conjunction with the common-law informer's privilege. The common-law informer's privilege, incorporated into the Act by section 552.101, 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). This 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). It 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).

You assert some of the basic information at issue reveals the identities of individuals who reported violations of the law to the department. You state the alleged violations carry criminal penalties. Upon review, we conclude the department may withhold the information we have marked in event report 2012-121257 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the remaining basic information at issue does not identify an individual who reported a violation

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

of the law, and the department may not withhold it under section 552.101 in conjunction with the common-law informer's privilege.

You also claim portions of the basic information in report 11-3513 and event reports 2011-154406, 2011-331344, and 2012-121257 are protected under common-law privacy. Section 552.101 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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 have marked portions of the basic information in event report 2011-331344 that are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information at issue may be withheld under section 552.101 on the basis of common-law privacy.

In summary, the department must withhold event report 2011-271277 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, the department may withhold the remaining information you have marked pursuant to section 552.108(a)(2) of the Government Code. When releasing basic information, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and must withhold the information we have marked 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 459827

Enc. Submitted documents

c: Requestor  
(w/o enclosures)