



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-11748

Dear Ms. Evans:

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# 460347 (GC No. 19672).

The City of Houston (the "city") received a request for twenty-four specified incident reports. You claim that 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.

Initially, we note you did not submit information responsive to incident report numbers 60237010, 58246310, 52432710, 7563510, 7542010, 110247105, 111408604, 16510012, 129311611, and 117776910. To the extent such information existed and was maintained by the city on the date it received the request for information, we presume the city has released it. If not, the city must do so at this time.¹ See Gov't Code §§ 552.301, .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

¹We note the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides:

(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). You represent Exhibits 2 and 14 were used or developed in an investigation by the city’s police department of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of ch. 261 of Fam. Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201). As such, this information is within the scope of section 261.201 of the Family Code. You also represent the city has not adopted a rule that governs the release of this type of information. Accordingly, the city must withhold Exhibits 2 and 14 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). 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, 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;

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

(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). For purposes of section 58.007(c), “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 agree Exhibits 7, 8, 10, and 13 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). It does not appear that any of the exceptions in section 58.007 apply. Therefore, we find that Exhibits 7, 8, 10, and 13 are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.³

Section 552.108(a)(1) of the Government Code 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibits 3, 4, 5, 6, and 11 pertain to cases that are inactive pending additional leads. You further state the statute of limitations on these cases has not run. You contend release of the information at issue would interfere with the detection and investigation of crime. Based on your representations, we find section 552.108(a)(1) is generally applicable to Exhibits 3, 4, 5, 6, and 11. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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)(2). You state Exhibits 9 and 15 pertain to concluded criminal investigations that did not result in a conviction or deferred adjudication. Based on your representation, we find section 552.108(a)(2) is generally applicable to Exhibits 9 and 15.

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

However, 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). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Except for the basic information, the city may withhold Exhibits 3, 4, 5, 6, and 11 under section 552.108(a)(1) of the Government Code and Exhibits 9 and 15 under section 552.108(a)(2) of the Government Code.⁴

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 satisfied. *Id.* at 681-82. The type 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. 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the portions of basic information we have marked in Exhibit 9 and the information we have marked in Exhibit 12 is highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the remaining information are subject to section 552.130 of the Government Code.⁵ Section 552.130 provides that information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1). The city must withhold the information we have marked in Exhibit 12 under section 552.130 of the Government Code.

In summary, the city must withhold Exhibits 2 and 14 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470.(1987).

must withhold Exhibits 7, 8, 10, and 13 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Except for the basic information, the city may withhold Exhibits 3, 4, 5, 6, and 11 under section 552.108(a)(1) of the Government Code and Exhibits 9 and 15 under section 552.108(a)(2) of the Government Code. The city must withhold the portions of basic information we have marked in Exhibit 9 and the information we have marked in Exhibit 12 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked in Exhibit 12 under section 552.130 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, 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 Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 460347

Enc. Submitted documents

c: Requestor
(w/o enclosures)