



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2012

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

OR2012-13327

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# 462949 (GC No. 19681).

The Houston Police Department (the "department") received a request for the basic information contained in the "incident reports and police emergency calls" from a specified time period and a list of the most wanted individuals, including their charge information, last known addresses, birth dates, and mugshots/booking photos. You state the requested mugshots/booking photos will be released. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted only some of the requested basic information. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (defining basic information that must be released from law enforcement records), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered basic in *Houston Chronicle*). In addition, you have not submitted the requested list of the most wanted individuals, including their charge information, last known addresses, and birth dates. To the extent the department maintains information

responsive to these parts of the request that existed on the date the request was received, we assume the department has released it. If the department has not released any such information, it must do so at this time. 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).

Next, we note you have submitted information other than the basic information from the requested incident reports and police emergency calls. *See Houston Chronicle*, 536 S.W. 2d at 186-87; ORD 127 at 3-4. Because the requestor only seeks the basic information from these incident reports and police emergency calls, any submitted non-basic information is not responsive to the request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

We next note section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. You acknowledge, and we agree, the department failed to comply with its ten-business-day deadline under section 552.301(b) in requesting this decision. *See* Gov't Code § 552.301(a)-(b). We note the department also failed to comply with its fifteen-business-day deadline under section 552.301(e). *See id.* § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because the applicability of section 552.101 of the Government Code can provide a compelling reason to withhold information from disclosure, we will consider your arguments under this section.

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, such as section 58.007(c) of the Family Code. This section provides as follows:

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)(3) (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). You claim that some of the responsive information is confidential under section 58.007. Upon review, we agree the information at issue in Exhibits 5, 6, 8, 10, 16, 18, and 19, and the entries in Exhibit 2 that correspond with these exhibits, involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Accordingly, we find the responsive information in Exhibits 5, 6, 8, 10, 16, 18, and 19, and the entries in Exhibit 2 that correspond with these exhibits, are confidential pursuant to section 58.007(c) of the Family Code, and the department must withhold this information under section 552.101 of the Government Code.<sup>1</sup> Although you assert some of the remaining responsive information is confidential under section 58.007, you have failed to demonstrate that any of this information identifies a juvenile as a suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Thus, the department may not withhold any of the remaining responsive information under section 552.101 in conjunction with section 58.007(c).

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(a) Except as provided by Section 261.203, the 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:

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

(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.

*See id.* § 261.201(a). You raise section 261.201(a) for some of the remaining responsive information. Upon review, we find the information at issue in Exhibits 3, 4, 9, 14, 15, and 20, and the entries in Exhibit 2 that correspond with these exhibits, were used or developed in investigations of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). You inform us that the department has not adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the information at issue is confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the responsive information in Exhibits 3, 4, 9, 14, 15, and 20, and the entries in Exhibit 2 that correspond with these exhibits, must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup> Although you seek to withhold some of the remaining responsive information on this basis, we find you have not demonstrated this information was used or developed in investigations under chapter 261 of the Family Code. Therefore, we conclude the department may not withhold any of the remaining responsive information under section 552.101 in conjunction with section 261.201(a).

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. 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. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its release.

the victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information). We have also found 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). In addition, this office has found common-law privacy applies to the identifying information of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. We also note the common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 at 3 (1983); *cf.* Fam. Code § 261.201. You claim that some of the remaining responsive information is protected by common-law privacy. Upon review, we conclude that the information we have marked in Exhibits 7, 11, 12, 13, 17, 21, and 22, and indicated in Exhibit 2, is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. We find, however, you have failed to demonstrate that any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the responsive information in Exhibits 5, 6, 8, 10, 16, 18, and 19, and the entries in Exhibit 2 that correspond with these exhibits, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the responsive information in Exhibits 3, 4, 9, 14, 15, and 20, and the entries in Exhibit 2 that correspond with these exhibits, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the responsive information we have marked in Exhibits 7, 11, 12, 13, 17, 21, and 22, and indicated in Exhibit 2, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining responsive information.<sup>3</sup>

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.

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<sup>3</sup>We note the information being released includes social security numbers. 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. *See* Gov't Code § 552.147(b).

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 462949

Enc. Submitted documents

c: Requestor  
(w/o enclosures)