



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2012

Ms. Donna L. Johnson
Counsel for the City of Cleveland
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2012-16942

Dear Ms. Johnson:

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# 468571 (Ref. COC12-041).

The City of Cleveland (the "city"), which you represent, received a request for all calls for service to a specified location during a specified time period. You state the city will redact information pursuant to sections 552.130 and 552.147 of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3), including a driver's license number, without the necessity of requesting a decision from this office. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). 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. *Id.* § 552.147(b).

Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides as follows:

(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). Upon review, we find a portion of the submitted information was used or developed in an investigation of child abuse or neglect conducted by the city's police department (the "department"). *See id.* § 261.001(1), (4) (defining "neglect" for purposes of chapter 261 of the 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 the disabilities of minority removed for general purposes). Therefore, this information falls within the scope of section 261.201(a). As you do not state the department has adopted a rule that governs the release of this type of information, we assume that none exists. Given that assumption, we conclude the information we have marked is confidential under section 261.201(a) of the Family Code, and the city must withhold it under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.108(a)(1) 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state call sheet report 1211381 and offense report 12-1048 relate to a pending criminal case. Based on your representation and our review, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See*

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

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). Therefore, we agree section 552.108(a)(1) is applicable to call sheet report 1211381 and offense report 12-1048.

Section 552.108(a)(2) 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). 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. You assert call sheet report 1211512 and incident report 12-1063 relate to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127. Thus, with the exception of the basic information, which must be released, the city may withhold call sheet report 1211381 and offense report 12-1048 under section 552.108(a)(1) of the Government Code and call sheet report 1211512 and incident report 12-1063 under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand the city is part of an emergency communication district established under section 772.318. You indicate the telephone numbers and addresses you have marked to be withheld under section 772.318 are the originating telephone numbers and addresses of 9-1-1

callers. Provided the telephone numbers and addresses you have marked were furnished by a service supplier, the city must withhold the telephone numbers and addresses under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if the 9-1-1 callers' telephone numbers and addresses were not furnished by a service supplier, then this information may not be withheld under section 552.101 in conjunction with section 772.318 and must be released.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. *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 (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information you have marked is highly intimate or embarrassing and of no legitimate public concern. Thus, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration, issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). The city must withhold the motor vehicle record information you have marked under section 552.130.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, which must be released, the city may withhold call sheet report 1211381 and offense report 12-1048 under section 552.108(a)(1) of the Government Code and call sheet report 1211512 and incident report 12-1063 under section 552.108(a)(2) of the Government Code. Provided the telephone numbers and addresses you have marked were furnished by a service supplier, the city must withhold the telephone numbers and addresses under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must also withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information you have marked under section 552.130 of the Government Code. The city must release the remaining information.

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,

A handwritten signature in cursive script that reads "Jennifer Burnett". The signature is written in black ink and extends across the width of the page.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 468571

Enc. Submitted documents

c: Requestor
(w/o enclosures)