



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2012

Mr. Joe Gorfida, Jr.  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza, 500 North Akard Street  
Dallas, Texas 75201

OR2012-18008

Dear Mr. Gorfida:

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# 470557.

The City of Sachse (the "city"), which you represent, received a request for all police and fire reports or activity for a specified address for a specified time period. You state the city has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Some of the submitted information pertains to an investigation by the city's police department (the "department") of alleged or suspected child abuse or neglect. As such, the information falls within the scope of section 261.201 of the Family Code. *See 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), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we determine the information we have marked is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). Accordingly, the city must withhold this information in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code.<sup>1</sup> Furthermore, because section 261.201(a) protects all "files, reports, communications, and working papers" related to an investigation under section 261.201, the city must not release front page offense report information pertaining to the marked information. *See Fam. Code § 261.201(a)(2)*.

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). A governmental body claiming section 552.108(a)(2) must demonstrate that 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information you have marked pertains to criminal cases that concluded in results other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

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

We note, 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 front-page 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, among other items, a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of the basic front page offense and arrest information, the city may withhold the remaining information you have marked under section 552.108(a)(2).<sup>2</sup>

Section 552.101 of the Government Code also encompasses the common-law right of 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 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373.

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate that any of the remaining information you seek to withhold 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.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument under section 552.130 of the Government Code for this information, except to note that basic information described in *Houston Chronicle* does not include information subject to section 552.130.

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. 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.

You state the information you have marked identifies an informer who reported an alleged violation of the city code of ordinances regarding water conservation to the department. You explain a violation of the ordinance at issue is a misdemeanor. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the informer. Based on your representations and our review, we conclude the city may withhold the information we have marked under section 552.101 in conjunction with the common-law informer's privilege. However, we find the remaining information you seek to withhold on this basis does not identify the complainant for purposes of the informer's privilege. As such, the city may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note section 552.130 does not protect the state of issuance of a driver's license. Upon review, we find the city must withhold the information we have marked under section 552.130. None of the remaining information you have marked is information that is subject to section 552.130; thus, the city may not withhold any of the remaining information on this basis.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. Upon review, we find the city may withhold the social security number we have marked under section 552.147.<sup>3</sup> None of the remaining information you have marked may be withheld on this basis.

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<sup>3</sup>We note 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. Gov't Code § 552.147(b).

In summary, the city: (1) 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; (2) may withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code, with the exception of basic information; (3) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege; (5) must withhold the information we have marked under section 552.130 of the Government Code; and (6) may withhold the social security number we have marked under section 552.147 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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 470557

Enc. Submitted documents

c: Requestor  
(w/o enclosures)