



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2013

Ms. Rebecca H. Brewer
Counsel for The City of Frisco
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2013-03539

Dear Ms. Brewer:

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# 480118.

The Frisco Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a specified incident.¹ You claim 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.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Therefore, the 10-business-day deadline for the first request was December 18, 2012. Upon review, we find the department did not raise section 552.130 of the Government Code until January 17, 2013. *See id.* § 552.308(a)(1) (describing rules for

¹The first request was received on December 4, 2012 (the "first request"), and the second request was received on January 8, 2013 (the "second request").

calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the department failed to comply with the procedural requirements under the Act in raising this exception in response to the first request, but otherwise complied with its deadlines.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (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); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). The department's claim under section 552.130 of the Government Code can provide a compelling reason for non-disclosure; therefore we will consider the applicability of this exception to the submitted information. We also will consider the applicability of your timely raised exceptions.

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 exception encompasses information made confidential by other statutes. Section 261.201 of the Family Code provides in 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 [the Family 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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You contend the submitted information is confidential under section 261.201(a). In this instance, however, the information at issue is related to an incident that allegedly occurred in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. Section 261.201 does not apply to an investigation of alleged or suspected child abuse or neglect in a home or facility regulated under chapter 42. *Id.* § 261.201(h). Therefore, section 261.201(a) of the Family Code is not applicable to the information at issue, and the department may not withhold the submitted information on that basis under section 552.101 of the Government Code.

You also raise section 552.108 of the Government Code. 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). 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 the release of the submitted information would interfere with a pending criminal case. Based on your representations, we conclude section 552.108(a)(1) is applicable in this instance.² *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 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 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 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes an identification and description of the complainant and a detailed description of the offense, but does not include the identity of a victim or witness who is not the complainant, or driver’s license information subject to section 552.130 of the Government Code. *See* ORD 127 at 3-4; *see also* Gov’t Code § 552.130. The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report.

You raise section 552.101 of the Government Code for portions of the basic information. Section 552.101 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

²As we are able to make this determination, we need not address your other claim under section 552.108 of the Government Code.

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.

You indicate the basic information includes the originating telephone number and address of a 9-1-1 caller furnished by a service supplier. However, you do not inform us whether the department is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Furthermore, upon review, we find you have not demonstrated that the basic information contains any information relating to a 9-1-1 caller that was furnished by a service supplier. We therefore conclude the department may not withhold any of the basic information under section 552.101 of the Government Code on the basis of section 772.118, section 772.218, or section 772.318 of the Health and Safety Code.

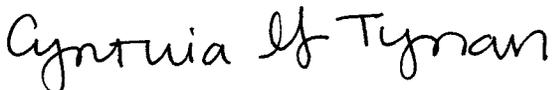
Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. 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. *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. *See id.* at 683. This office has also found common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See Open Records Decision No. 394* (1983); *cf. Fam. Code* § 261.201. However, in this instance, the first requestor is the authorized representative of the alleged child victim of abuse or neglect and the child's parents; furthermore, the second requestor is a parent of the alleged child victim. As such, both requestors have a special right of access under section 552.023 of the Government Code to information pertaining to the child victim the department would be required to withhold from the general public to protect the victim's privacy. *See Gov't Code* § 552.023; *Open Records Decision No. 481* at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the department may not withhold the information pertaining to the alleged child victim from either requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find no portion of the remaining basic information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, none of the basic information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.³

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 480118

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³As previously noted, the information to be released contains information to which the requestors have a right of access. *See* Gov't Code § 552.023; ORD 481. Because such information may be confidential with respect to the general public, if the department receives another request for this information from a requestor without such a right of access, the department must again seek a ruling from this office.