



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2013

Ms. Karen Saldana
Records Clerk
Saginaw Police Department
505 West McLeroy Boulevard
Saginaw, Texas 76179

OR2013-11067

Dear Ms. Saldana:

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# 491642 (Saginaw ID# 7362).

The Saginaw Police Department (the "department") received a request for police or code enforcement records for a specified address during a specified time period. You claim 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.

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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(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;

(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 at the time of the reported conduct. *See id.* § 51.02(2). We note section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. You claim report number 1200020468 is subject to section 58.007(c) of the Family Code. Upon review, we find report number 1200020468 does not list a juvenile as a suspect, offender, or defendant. Thus, you have not demonstrated how report number 1200020468 involves juvenile delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007 of the Family Code. Accordingly, no portion of report number 1200020468 may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 and 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. You seek to withhold report number 11032851 and call for service number 10310907 in their entirety. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. Accordingly, the department may not withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find portions of report number 11032851 and call for service number 10310907 are highly intimate or embarrassing and of no legitimate public

concern. Accordingly, the department must withhold the information we have marked in report number 11032851 and call for service number 10310907 under section 552.101 of the Government Code in conjunction with common-law privacy.

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 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate report numbers 1200020468 and 1200020478 pertain to open and pending criminal investigations. 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 Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. 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). Thus, section 552.108(a)(1) is applicable to report numbers 1200020468 and 1200020478.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You indicate report numbers 02000504 and 09010342 and call for service numbers 9956927 and 10194870 pertain to cases that are closed because the district attorney declined to prosecute those cases. Accordingly, we understand you to assert these investigations did not result in conviction or deferred adjudication. Additionally, you indicate report number 1300005897 pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to report numbers 02000504, 09010342, and 1300005897 and call for service numbers 9956927 and 10194870.

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 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold report numbers 1200020468 and 1200020478 under section 552.108(a)(1) and report numbers 02000504, 09010342, and 1300005897 and call for service numbers 9956927 and 10194870 under section 552.108(a)(2).

In summary, the department must withhold the information we have marked in report number 11032851 and call for service number 10310907 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold report numbers 1200020468 and 1200020478 under section 552.108(a)(1) and report numbers 02000504, 09010342, and 1300005897 and call for service numbers 9956927 and 10194870 under section 552.108(a)(2). 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 491642

Enc. Submitted documents

c: Requestor
(w/o enclosures)