



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2013

Ms. Judi S. Rawls
Police Legal Counsel
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2013-15227

Dear Ms. Rawls:

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# 498047.

The Beaumont Police Department (the "department") received a request for calls for service on a specified date during a specified time period. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code which provides in relevant part:

(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). Section 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). 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). Your state call for service number 2013012561 pertains to a juvenile suspect who was ten years of age or older and under seventeen years of age at the time of the incident. Further, the call for service involves juvenile delinquent conduct that occurred after September 1, 1997. You do not inform us, and it does not appear, any of the exceptions in section 58.007 apply to the information at issue. Therefore, call for service number 2013012561 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1702.284 of the Occupations Code.¹ Section 1702.284(a) provides:

(a) Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the [Texas Private Security Board], to the alarm company to which the confidential records relate, or as otherwise required by state law or court order.

Occ. Code § 1702.284(a); *see also id.* § 1702.002(1)(A)(ii) (defining “alarm system” as electronic equipment and devices designed to detect or signal the occurrence of a robbery or other emergency). You assert call for service number 20130079895 is excepted from disclosure under section 1702.284. However, we note section 1702.284 is not applicable to investigative information. *See Act of June 19, 1983, 68th Leg., R.S., ch. 496, § 1, 1983 Tex. Gen. Laws 2915.* Accordingly, the department may not withhold call for service number 20130079895 under section 552.101 of the Government Code in conjunction with section 1702.284 of the Occupations Code.

¹Although you cite to section 1702.282 of the Occupations Code, we understand you to argue section 1702.284 based on the substance of your argument.

Section 552.101 also encompasses the doctrine of 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We understand you to argue call for service number 20130079895 is excepted from required disclosure under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. For many years, this office determined section 552.101, in conjunction with the common-law right to privacy, protected information from disclosure when “special circumstances” exist in which the disclosure of information would place an individual in imminent danger of physical harm. *See, e.g.*, Open Records Decision Nos. 169 (1977) (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution), 123 (1976) (information protected by common-law right of privacy if disclosure presents tangible physical danger). However, the Texas Supreme Court has held freedom from physical harm does not fall under the common-law right to privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112 (Tex. 2011) (holding “freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). Instead, in *Cox*, the court recognized, for the first time, a separate common-law physical safety exception to required disclosure that exists independent of the common-law right to privacy. *Id.* at 118. Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119. You generally assert the release of the alarm holder’s identifying information and the existence of an alarm on specified property would violate the alarm holder’s safety. However, upon review, we find you have failed to demonstrate how release of the information at issue would create a substantial threat of physical harm to the alarm holder at issue. Accordingly, the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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: (1) 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 state calls for service numbers 2013012562a through 2013012562h and the entirety of CD 2 relate to two pending criminal cases. Based on this representation, we find release of the information at issue would interfere with the detection, investigation, or prosecution of

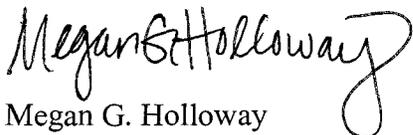
crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is applicable to this information. Accordingly, the department may withhold calls for service numbers 2013012562a through 2013012562h and the entirety of CD 2 under section 552.108(a)(1).

In summary, the department must withhold call for service number 2013012561 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department may withhold calls for service numbers 2013012562a through 2013012562h and the entirety of CD 2 under section 552.108(a)(1). 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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/dls

Ref: ID# 498047

Enc. Submitted documents

c: Requestor
(w/o enclosures)