



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2013

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2011-17866

Dear Ms. Kretz:

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# 502368 (Fort Worth ORR# W027138-070913).

The City of Fort Worth (the "city") received a request for reports and records for all crimes at a specified address during a specified time period.¹ You state the city will redact information from the submitted documents pursuant to section 552.130(c) of the Government Code and section 552.130(a)(2) of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006).² You also inform us you will redact social security numbers

¹You inform us the city provided the requestor with an estimate of charges and a request for a deposit for payment of those charges on July 18, 2013. *See* Gov't Code §§ 552.2615, .263(a). You state the city received a deposit for payment of the anticipated costs on July 24, 2013. Thus, July 24, 2013, is the date on which the city is deemed to have received the request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on the date the governmental body receives deposit or bond).

²Open Records Letter Nos. 2007-00198 and 2006-14726 are previous determinations authorizing the city to withhold certain information subject to section 552.130(a)(2) of the Government Code without the necessity of requesting an attorney general decision. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Letter Nos. 2007-00198 and 2006-14726. Therefore, a governmental body may redact information subject to subsection 552.130(a)(2) only in accordance with section 552.130, not Open Records Letter Nos. 2007-00198 and 2006-14726.

pursuant to section 552.147(b) of the Government Code and personal e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).³ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 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 exception encompasses information other statutes make confidential, 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). Upon review, we agree the information you have indicated in Exhibit C4 pertains to an investigation of alleged or suspected child abuse. Thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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) (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate the city’s police department has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, we determine the information you have indicated in Exhibit C4 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

³Section 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. *See* Gov’t Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its release.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in pertinent part 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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 conduct. *See id.* § 51.02(2). Upon review, we find Exhibit C1 involves children engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the city must withhold Exhibit C1 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.⁵

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See Gov’t Code* § 411.089(b)(1). The remaining information contains an Federal Bureau of Investigation (“FBI”) number that constitutes CHRI generated by the FBI. Therefore, the city must withhold the FBI number

⁵As our ruling is dispositive for this information, we need not address your remaining argument against its release.

we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. None of the remaining information is confidential under federal law or subchapter F of chapter 411 of the Government Code and none of the remaining information may be withheld on that basis under section 552.101.

Section 552.101 also encompasses the common-law right to 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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Letter No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App —El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find most of the information the city marked, and the information we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find some of the information the city marked is either not highly intimate and embarrassing or is of legitimate public interest, or pertains to an individual who has been de-identified and whose privacy interests are, thus, protected. Accordingly, none of this information, which we marked for release, may be withheld under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the information we have marked for release, the city must withhold the information you have marked and the additional information we marked under section 552.101 in conjunction with common-law privacy.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state the information you have marked in Exhibit C2 identifies undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we conclude you have demonstrated release of the names and identification numbers you have marked would subject the officers to a substantial threat of physical harm. Therefore, the city must withhold the names and identification numbers you have marked under section 552.152 of the Government Code.

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(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information in Exhibit C2 relates to open and pending criminal cases. Based on these representations, we conclude the release of these reports 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, section 552.108(a)(1) is applicable to Exhibit C2.

We note, however, 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 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*). Accordingly, with the exception of basic information, the city may withhold Exhibit C2 under section 552.108(a)(1) of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the information you have indicated in Exhibit C4 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. The city must withhold Exhibit C1 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. With the exception of the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the names and identification numbers you have marked under section 552.152 of the Government Code. With the exception of basic information, the city may withhold Exhibit C2 under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. 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,



Tamara R. Strain
Assistant Attorney General
Open Records Division

TRS/bhf

Ref: ID# 502368

Enc. Submitted documents

c: Requestor
(w/o enclosures)