



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2014

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-06958

Dear Ms. Mares:

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# 520990.

The City of McKinney (the "city"), which you represent, received six requests from five requestors for information pertaining to a specified incident and for all records, including animal control reports, pertaining to four of the requestors and several addresses during specified time periods. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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. Section 261.201 of the Family Code provides, in part, as follows:

- (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 this chapter 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 this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Exhibit B-5 relates to a report of alleged or suspected child abuse or neglect to the city's police department (the "police department"). *See id.* §§ 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code), 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude Exhibit B-5 is confidential pursuant to section 261.201 of the Family Code, and the city must withhold it under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

Section 552.101 of the Government Code also encompasses section 826.0211 of the Health and Safety Code, which provides, in part:

(a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). Section 826.0211 applies only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. You state Exhibit B-3 consists of an animal's rabies vaccination certificate. We agree the information you marked identifies or tends to identify an owner or consists of an address, telephone number, or other personally identifying information of an owner. Accordingly, we conclude the city must withhold the information you marked in Exhibit B-3 under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety 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). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. You state, “Under the McKinney City Code, as amended, the [c]ity’s Animal Control Department (the ‘[animal control] department’) is expressly charged with enforcing criminal and civil laws related to animal control laws regulating the health, care and safety of animals and investigating alleged violations of animal control laws.” You state the animal control department files criminal complaints with the city’s municipal court for alleged violations of animal control laws. Based on your representations, we find the animal control department is a law enforcement agency for purposes of section 552.108.

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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B-1 and Exhibit B-4 pertain to active criminal investigations by the animal control department and the police department. Based on your representation, we conclude the 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). Accordingly, we find section 552.108(a)(1) is applicable to the information at issue.

However, we note, and you acknowledge, 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). Basic information refers to the 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 considered to be basic information). Thus, with the exception of the basic information in Exhibit B-4, the city may withhold Exhibits B-1 and B-4 under section 552.108(a)(1) of the Government Code.

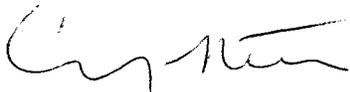
Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates 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). As noted above, we find the animal control department is a law enforcement agency for purposes of section 552.108. You state Exhibit B-2 relates to a closed investigation by the animal control department that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude the city may withhold Exhibit B-2 under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold Exhibit B-5 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information you marked in Exhibit B-3 under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. With the exception of the basic information in Exhibit B-4, the city may withhold Exhibits B-1 and B-4 under section 552.108(a)(1) of the Government Code. The city may withhold Exhibit B-2 under section 552.108(a)(2) 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.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/som

Ref: ID# 520990

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)