



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-16003

Dear Ms. Honey:

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# 574128 (Fort Worth PIR No. W042738).

The City of Fort Worth (the "city") received a request for a specified incident report, information related to all police activity from a specified telephone number, and information related to police activity at a specified address.¹ You state the city has released some information to the requestor. You further state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and certain criminal history record information pursuant to the previous determination issued in Open Records Letter

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

No. 2013-22304 (2013).² 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.

Initially, you inform us the requested specified incident report was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-08586 (2015). In Open Records Letter No. 2015-08586, we determined the city's police department must withhold some of the information at issue in that request under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In the instant request, however, the requestor is a parent of the child victim listed in the information and is not suspected of committing the alleged abuse. Accordingly, this requestor has a special right of access to information pertaining to his child under section 261.201(k) of the Family Code. Thus, we find the circumstances have changed in regard to this information and the city may not rely on Open Records Letter No. 2015-08586 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

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 such as 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;

²Section 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* 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 id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Letter No. 2013-22304 is a previous determination issued to the city authorizing it to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without the necessity of requesting an attorney general decision.

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Id. § 58.007(c), (e), (j)(2). 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 at issue. *See id.* § 51.02(2). The information in Exhibit C-2 involves a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). In this instance, however, the submitted documentation reflects the requestor is a parent of the juvenile offender and, therefore, has access to the information at issue pursuant to section 58.007(e). *See id.* § 58.007(e). Accordingly, the city may not withhold the information in Exhibit C-2 from the requestor under section 58.007(c) of the Family Code. *See id.* § 58.007(e). However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2). Thus, we will consider whether the information in Exhibit C-2 is otherwise excepted from disclosure under the Act.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201 of the Family Code provides:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). You state Exhibit C-7 and Exhibit C-9 consist of information that was used or developed in alleged or suspected child abuse investigations. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* 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. However, as previously noted, the documents reflect the requestor is a parent of the child victims listed in the information, and is not alleged to have committed the abuse. *See id.* § 261.201(k). Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a) of the Government Code. However, section 261.201(l)(2) provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(l)(2). Thus, we will consider whether the information subject to section 261.201(k) of the Government Code is otherwise excepted from disclosure under the Act.

Section 552.101 of the Government Code 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note the telephone numbers of members of the public are generally not highly intimate or embarrassing. *See id.* at 7 (home addresses, telephone numbers, dates of birth not protected under privacy).

You seek to withhold portions of the remaining information under common-law privacy. However, we note some of the information at issue pertains to the requestor's children, one of whom is a minor child. As a parent of the minor with the privacy interest, the requestor has a special right of access to information that would ordinarily be withheld to protect the minor's common-law privacy, and such information cannot be withheld from the requestor on that basis. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). As such, the city may not withhold the information pertaining to the requestor's minor child under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor no longer has a right of access to his adult child's records. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation* and is information to which the requestor does not have a right of access. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public concern or is information to which the requestor does not have a right of access. Therefore, no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). The city states the information in Exhibit C-1 and Exhibit C-6 relates to pending criminal investigations or prosecutions. Based on this 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the information in Exhibit C-1 and Exhibit C-6.

However, as 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the information in Exhibit C-1 and Exhibit C-6 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code 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(a). We note some of the information you have marked is not subject to section 552.130. As such, this information, which we have marked for release, may not be withheld on that basis. Therefore, with the exception of the information we have marked for release, the city must withhold the motor vehicle record information marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold the information in Exhibit C-1 and Exhibit C-6 under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the city must withhold the motor vehicle record information marked under section 552.130 of the Government Code. The city must release the remaining information.³

³We note the requestor has a right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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,

A handwritten signature in black ink, appearing to read 'JBH', with a large, stylized flourish extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 574128

Enc. Submitted documents

c: Requestor
(w/o enclosures)