



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 15, 2016

Ms. Robert Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2016-01239

Dear Ms. Ray:

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# 594324.

The City of Longview (the "city") received a request for specified communications regarding gangs, shootings, homicides, murders or the crime rate in the city. The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the court-filed documents, which we have marked, under section 552.108. However, because sections 552.101 and 552.130 of the Government Code make information confidential for purposes of section 552.022, we will address their

applicability to the court-filed documents subject to section 522.022(a)(17). Further, we will address the city's arguments against disclosure of the remaining information.

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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states the remaining information it has marked relates to pending criminal investigations or prosecutions. Upon review, 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the information it has marked that is not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code.¹

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. Section 552.101 encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). Section 58.007 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

¹As our ruling is dispositive, we need not address the city's remaining arguments against disclosure of this information.

(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 when the conduct occurred. *See id.* § 51.02(2). The city asserts the remaining information it has marked is confidential under section 58.007(c). Upon review, we find some of the information at issue, which we have marked, consists of law enforcement records involving juvenile delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, this information, which we have marked, 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.² However, although the remaining information the city has marked consists of law enforcement records involving delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997, we are unable to determine the ages of the offenders at issue. Therefore, we must rule conditionally. To the extent any of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the city must withhold the remaining information it has marked relating to that offender under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, to the extent any of the offenders at issue were not ten years of age or older and under seventeen years of age at the time of the conduct, the city may not withhold the remaining information it has marked relating to that offender on that ground.

Section 552.101 of the Government Code also encompasses chapter 61 of the Code of Criminal Procedure, which addresses intelligence information pertaining to street gangs. Article 61.02 provides, in part, “a criminal justice agency . . . shall compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs.” Crim. Proc. Code art. 61.02(a). Article 61.03 provides, in relevant part, the following:

(a) A criminal justice agency may release on request information maintained under [Chapter 61 of the Code of Criminal Procedure] to:

- (1) another criminal justice agency;
- (2) a court; or

²As our ruling is dispositive, we need not address the city’s remaining argument against disclosure of this information.

(3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Id. art. 61.03(a). Further, article 61.05 of the Code of Criminal Procedure provides release of this information to a person who is not entitled to the information is a Class A misdemeanor. *See id.* art. 61.05(b). The city states the release of the remaining information it has marked would reveal intelligence information law enforcement officials have gathered regarding persons involved in gangs and activities of gangs. We understand the requestor is not entitled to obtain the information under article 61.03. Therefore, we conclude the city must withhold the remaining information it has marked under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.³

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Upon review, we find the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the city may withhold the information it has marked that is not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked, and to the extent any of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the remaining information it has marked relating to that offender under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Government Code. The city must withhold (1) the remaining information it has marked under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure; (2) the motor vehicle record information it has marked under section 552.130 of the Government Code; and (3) the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city must release the remaining information.

³As our ruling is dispositive, we need not address the city's remaining argument against disclosure of this 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 594324

Enc. Submitted documents

c: Requestor
(w/o enclosures)