



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2017-13942

Dear Mr. Kopp:

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# 662982 (COSA File No. W162929).

The City of San Antonio (the "city") received a request for police reports resulting from calls made by three specified phone numbers pertaining to two specified addresses during a certain time period. You state the city will redact certain information pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code.¹ You state the city will redact dates of birth pursuant to Open Records Letter No. 2016-08566 (2016).² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). *Id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). Section 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 an attorney general decision under the Act. *See id.* § 552.147(b).

²Open Records Letter No. 2016-08566 authorizes the city to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note the city has redacted portions of the submitted information. As noted above, the city has redacted dates of birth pursuant to the previous determination in Open Records Letter No. 2016-08566. However, you have also redacted additional information. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Some of the submitted information involves an alleged violation of section 32.51 of the Penal Code, which provides, “[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person’s consent[.]” Penal Code § 32.51(b)(1). For purposes of section 32.51, “identifying information” includes an individual’s name. *Id.* § 32.51(a)(1)(A). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005, and provides:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

³We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005, if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, report number SAPD17065676 pertains to a report of forgery, which constitutes an alleged violation of section 32.51. We note the requestor is the victim of the alleged identity theft listed in the report and the alleged offense occurred after September 1, 2005. Therefore, the report at issue is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor. *See* Crim. Proc. Code art. 2.29. Although you seek to withhold the report under section 552.108 of the Government Code, this exception does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, report number SAPD17065676 may not be withheld under section 552.108 of the Government Code. As you raise no other exceptions to disclosure for report number SAPD17065676, it must 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." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 261.201(a) 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 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). You state the marked information was used in an investigation by the city's police department of alleged child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201 of Family Code). You do not indicate the city has adopted any rules that would permit the release of the information

at issue. Accordingly, we find the information you marked, and the additional information we marked, is subject to chapter 261 of the Family Code. Therefore, we conclude the marked information is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must 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 the information you marked relates to an ongoing investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon 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 (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 the remaining information you marked.

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. 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); Open Records Decision No. 434 (1986). You state the information you marked pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the city may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code and the information you marked under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by the federal Driver’s Privacy Protection Act of 1994 (the “DPPA”), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

...

(b) Permissible uses.—Personal information referred to in subsection (a) . . . may be disclosed as follows:

(1) For use by any government agency, including any . . . law enforcement agency, in carrying out its functions[.]

...

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)(1), (b)(1), (13), (c). The DPPA defines “motor vehicle record,” in relevant part, as “any record that pertains to a motor vehicle operator’s permit . . . issued by a department of motor vehicles[.]” *Id.* § 2725(1). Section 2725 also defines personal information as “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address, (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.” *See id.* § 2725(3).

You assert the remaining information contains personal information obtained from the Texas Department of Public Safety (“DPS”) that is protected under the DPPA. We note this office

has concluded the DPPA applies to information in the possession of DPS. Attorney General Opinion JC-0499 at 1 (2002). You explain the city obtained the personal information for use in carrying out its functions with regard to law enforcement.

Based upon your representations and our review, we find the city, in obtaining personal information from DPS to assist the city in carrying out its law enforcement functions, is an authorized recipient of personal information for purposes of section 2721(c). *See* 18 U.S.C. § 2721(b)(1) (providing that personal information may be disclosed by a state department of motor vehicles to any entity acting on behalf of a Federal, State, or local agency in carrying out its functions). Therefore, we conclude the information we marked is personal information obtained from DPS by an authorized recipient and is generally confidential under section 2721 of title 18 of the United States Code. However, an authorized recipient of personal information for purposes of section 2721(c) may only resell or redisclose the information for a use permitted under subsection (b), but not for uses under subsections (b)(11) or (b)(12). *See id.* § 2721(c). Section 2721(b)(13) provides for the permissible release of personal information subject to the DPPA if the requestor demonstrates he has obtained the written consent of the individual to whom the information pertains. *See id.* § 2721(b)(13). In this instance, the requestor is one of the individuals to whom the information pertains. Therefore, the city has the discretion to release the requestor's information at issue pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. *See id.* § 2721 (b)(13), (c). Otherwise the city must withhold the requestor's information at issue under section 552.101 of the Government Code in conjunction with section 2721 of title 18 of the United States Code. In either case, as we have no indication that release of the remaining information at issue would be for a use permitted under section 2721(b), we conclude the city must withhold the information pertaining to other individuals, which we marked, under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. *See id.* § 2721(a)(1). However, we find no portion of the remaining information consists of personal information obtained from the DPS and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 772.318 of the Health and Safety Code which applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). We understand the city is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You assert the telephone number you marked in the remaining information consists of an originating telephone number of a 9-1-1 caller. Accordingly, to the extent phone number you marked was provided by a service supplier, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if the information at issue was not supplied by a 9-1-1 service supplier, then the city may not withhold this information under section 552.101 on the basis of section 772.318 of the Health and Safety Code

Additionally, section 552.101 of the Government Code 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 demonstrated. *See id.* at 681-82. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we agree the remaining information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of the individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the report from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold report number SAPD15155954, which we marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Further, the city must withhold the information we marked in the remaining documents under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public interest. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, the city must release report number SAPD17065676 to the requestor. The city must withhold the information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the city may withhold the marked information under section 552.108(a)(1) of the Government Code and the marked information under section 552.108(a)(2) of the Government Code. The marked personal information must generally be withheld under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code, but the city has the discretion to release the marked information pertaining to the requestor pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. Either way, the city must withhold the marked information pertaining to individuals other than the requestor under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. To the extent phone number you marked was provided

by a service supplier, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold report number SAPD15155954 in its entirety, and the information we marked in the remaining documents, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.⁴

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 662982

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a)(a governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Crim. Proc. Code art. 2.29; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.