



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2017

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

OR2017-14490

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# 664027 (COSA File No. W163821).

The City of San Antonio (the "city") received a request for fifteen specified reports. You state the city will redact information pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code and pursuant to Open Records Letter No. 2016-08566 (2016).¹ You claim the submitted information is excepted from disclosure

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. 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 a decision from this office under the Act. *Id.* § 552.147(b). Open Records Letter No. 2016-08566 authorizes the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

under sections 552.101 and 552.108 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 section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part, the following:

(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). One of the submitted reports pertains to an investigation by the city’s police department of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” 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 no such regulation exists. Given that assumption, and based on our review, we determine the report we marked must be withheld in its entirety under section 552.101 in conjunction with section 261.201(a).²

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 explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining

²As our ruling is dispositive, we need not address your argument against disclosure of this information.

why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you marked relates to an open and pending criminal investigation. Based upon your representation and our review, we conclude 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 “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to 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 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). You state the information you marked pertains to criminal investigations that concluded in results other than convictions or deferred adjudications. Based on your representation, we agree section 552.108(a)(2) is applicable to the information you marked.

We note, however, section 552.108 of the Government Code does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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 the types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold the remaining information you marked under section 552.108(a)(1) and the information you marked under section 552.108(a)(2).

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 or 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).

You assert the basic information of one of the submitted reports is protected by common-law privacy. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining basic information at issue is highly intimate or embarrassing and not of legitimate public concern and the city may not withhold it under section 552.101 on that basis.

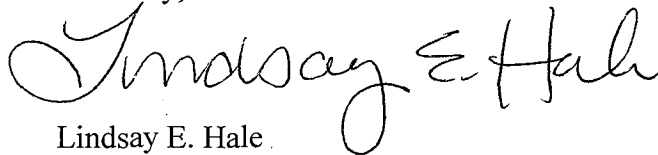
Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. The city indicates it is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. The city marked telephone numbers it seeks to withhold. We conclude the city must withhold the marked telephone numbers under section 552.101 in conjunction with section 772.318 if they consist of the originating telephone numbers furnished by a 9-1-1 service supplier. If the marked information does not consist of the originating telephone numbers provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.318.

In summary, the city must withhold the report we marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the 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. In releasing basic information, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the telephone numbers it marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of the originating telephone numbers furnished by a 9-1-1 service supplier. 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tdw

Ref: ID# 664027

Enc. Submitted documents

c: Requestor
(w/o enclosures)