



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2020

Ms. Dyanne Hargrove
Paralegal
City Attorney's Office
City of Cedar Park
450 Cypress Creek Rd
Cedar Park, Texas 78613

OR2020-28072

Dear Ms. Hargrove:

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# 853189 (Ref No. 20-1322).

The City of Cedar Park (the "city") received a request for police records concerning a specified address during a certain date range. 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.

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 section 261.201 of the Family Code, which 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). You state Exhibits B, C, and E were used or developed in investigations of alleged or suspected child abuse or neglect conducted by the city's police department. *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). Accordingly, we find this information is subject to chapter 261 of the Family Code. You also state the city has not adopted a rule that governs the release of this type of information. Therefore, we conclude Exhibits B, C, and E are generally confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

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). You state Exhibit D relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to Exhibit D.

However, section 552.108 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 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). Thus, with the exception of the basic information, the city may generally withhold Exhibit D under section 552.108(a)(2) of the Government Code.²

However, we note the requestor is a representative of the City of Round Rock Housing Authority (the "housing authority"). Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides, "[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). Section 1437d(q)(1)(C) provides, "[a] law enforcement agency described in subparagraph (A) shall provide

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

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

information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” *Id.* § 1437d(q)(1)(C). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive criminal history record information (“CHRI”). ORD 655 at 4. CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). The Texas Department of Public Safety is required to provide CHRI to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. *Id.* § 411.083(b)(2). However, the federal law limits the purposes for which a public housing authority may request CHRI. The federal law provides, among other things, CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law[.]” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over sections 58.008 and 261.201 of the Family Code and section 552.108 of the Government Code. *Cf. Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law).

The requestor does not indicate whether the requested information will be used for purposes of applicant screening, lease enforcement, or eviction. Accordingly, we must rule in the alternative. If the city determines Exhibits B, C, D, and E will be used for purposes of applicant screening, lease enforcement, or eviction, then the city must release any CHRI of applicants or tenants of public housing in accordance with section 1437d(q)(1) of chapter 42 of the United States Code, but must withhold the remaining information in Exhibits B, C, and E under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and, with the exception of basic information, may withhold the remaining information in Exhibit D under section 552.108(a)(2) of the Government Code. *See also* 24 C.F.R. § 5.903 (describing public housing authorities’ access to criminal records). However, if the city determines the information will not be used for purposes of applicant screening, lease enforcement, or eviction, then the city must withhold Exhibits B, C, and E in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and, with the exception of basic information, may withhold Exhibit D under section 552.108(a)(2) of the Government Code.

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). Upon review, we find a portion of the basic information being released in

Exhibit D satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, in releasing the basic information, the city must withhold the information we marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold Exhibits B, C, and E under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, which must be released, the city may withhold Exhibit D under section 552.108(a)(2) of the Government Code. However, if the information will be used for purposes of lease enforcement or eviction, then the city must also release any CHRI of applicants or tenants of public housing in Exhibits B, C, D, or E in accordance with section 1437d(q)(1) of chapter 42 of the United States Code. In releasing the basic information, the city must withhold the information we marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jm

Ref: ID# 853189

Enc. Submitted documents

c: Requestor
(w/o enclosures)