



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2007

Ms. Judith Sachitano Rawls  
Assistant City Attorney  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2007-03102

Dear Ms. Rawls:

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# 273884.

The Beaumont Police Department (the "department") received a request for all records involving the requestor. You claim that the requested 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 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 the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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. *Id.* at 681-82. A compilation of an individual's criminal history 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not protected under common-law privacy and may not be withheld under section 552.101 on that basis.

However, in this instance, the requestor asks for a compilation of criminal history pertaining to himself. The requestor has a special right of access to a compilation of his own criminal history, to the extent that it exists. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person, or person's agent, to whom information relates on grounds that information is considered confidential by privacy principles). Thus, none of the submitted information may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

(a) The 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); *see also id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). You raise section 261.201 for report 2000-016149. Because this information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, report 2000-016149 is confidential pursuant to section 261.201 of the Family Code, and must be withheld in its entirety under section 552.101 of the Government Code. As our ruling on this issue is dispositive, we need not address your remaining arguments for report 2000-016149.

We understand you to raise section 552.101 in conjunction with section 58.007 of the Family Code for the remaining submitted information, which provides in part:

(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
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You have not demonstrated, and it is not otherwise clear to this office, that any of the submitted information involves an offender who is a child for the purposes of section 58.007. We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We next address your argument that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) 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)(1), (2). Generally, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) typically protects information that pertains to a pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. 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). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You indicate that the remaining submitted information pertains to cases that remain open and pending. We therefore understand you to assert the applicability of section 552.108(a)(1). However, we note that report 2001-011924 relates to an alleged burglary that occurred on May 17, 2001. You received the request for this information on December 27, 2006 and the statute of limitations for burglary is five years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.01(4)(A) (felony indictment for burglary must be presented no later than five years from the date of the commission of the offense). We also note that report 2001-017977 relates to criminal mischief that occurred on July 19, 2001. The longest possible statute of limitations for this report is two years. *See* Penal Code § 20.03(b)(2), (3) (criminal mischief causing pecuniary loss of \$50 or more but less than \$1,500 is misdemeanor), Crim. Proc. Code art. 12.02 (misdemeanors subject to two year limitations period). More than two years elapsed between July 19, 2001 and the date you received this request for information, December 27, 2006. Thus, the statutes of limitations have run for reports 2001-011924 and 2001-017977. With regard to these two reports, you have neither informed this office that any criminal charges were filed within the limitations period nor have you explained how release of the information would interfere with the detection, investigation, or prosecution of offenses for which the statutes of limitations has run. Thus, the department has not established the applicability of section 552.108(a)(1) to reports 2001-011924 and 2001-017977. As you do not raise any other exceptions against disclosure, the department must release reports 2001-011924 and 2001-017977 to the requestor.<sup>1</sup>

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<sup>1</sup> We note that because the requestor has a special right of access to information in the submitted documents that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

In summary, the department must withhold report 2000-016149 under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

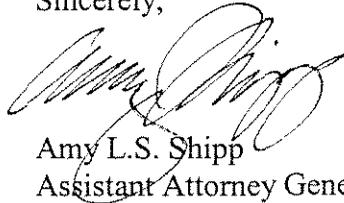
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy L.S. Shipp', is written over the typed name.

Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/sdk

Ref: ID# 273884

Enc. Submitted documents

c: Mr. Sathar Ansari  
2003 Forest View Drive  
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(w/o enclosures)