



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2007

Mr. Joseph Harney
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2007-05964

Dear Mr. Harney:

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# 278579.

The Corpus Christi Police Department (the "department") received a request for all information in which a named individual is a defendant, witness, or complainant. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that one of the submitted documents is not responsive to the instant request because it does not relate to the named individual. We next note that some of the submitted information was created after the department's receipt of this request for information. Because this information was created after the department's receipt of the request, it is not encompassed by the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at the time request was received). Information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling.

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 the doctrine of common-law privacy. Common law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540

S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Additionally, this office has found that 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. *U.S. 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. In this instance, part of the request seeks all information in which the named individual is a defendant. We find that this aspect of the request implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common law privacy. However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common law privacy. Cf. Gov't Code § 411.082(2)(B). Further, you have submitted information in which the named individual is not a suspect, arrestee, or criminal defendant. This information is not protected by common law privacy. Upon review, the department must withhold the information we have marked under common law privacy.

You claim that the submitted information contains criminal history record information ("CHRI"). Section 552.101 encompasses CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083. We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. See Gov't Code § 411.082(2)(B) (definition of CHRI does not include driving record information). Upon review, we find that the submitted information does not contain CHRI made confidential by section 411.083. Thus,

the department may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

Next, some of the submitted information is confidential under the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records.¹ Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). The information which we have marked relates to juvenile conduct that occurred before January 1, 1996. Therefore, it must be withheld in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

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, 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). We note that the submitted information contains files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021). You do not inform us that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the information we have marked is confidential pursuant to

¹Although you state that the some of the submitted information is confidential pursuant to section 58.007 of the Family Code, that section applies only to records relating to conduct that occurred on or after September 1, 1997. Because the conduct at issue occurred in 1993 and 1994, we address it under section 51.14 rather than section 58.007.

section 261.201 of the Family Code, and that the department must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.”² *Id.* § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked in the remaining information.

In summary, the department must withhold the information we have marked under common law privacy in conjunction with section 552.101 of the Government Code. The department must withhold the information we have marked under former section 51.14 of the Family Code and section 261.201 of the Family Code, each in conjunction with section 552.101. The department must withhold the Texas motor vehicle record information we have marked under section 552.130. The remaining information must be released.³

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

²The Office of the Attorney General will raise mandatory exceptions like sections 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note that the submitted information contains social security numbers. 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.

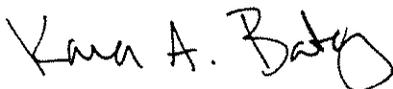
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/mcf

Ref: ID# 278579

Enc. Submitted documents

c: Mr. Michael O' Brien
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(w/o enclosures)