



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2007

Ms. Jerris Penrod Mapes
Assistant City Attorney
City of Killeen
402 North Second Street
Killeen, Texas 76541-5298

OR2007-10125

Dear Ms. Mapes:

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# 286324.

The City of Killeen (the "city") received a request for all records involving a named juvenile from October 2005 to the present, calls for service for a specified address from October 2005 to January 2007, and calls for service for a specified address from January 2007 to the present. You state that you have provided the requestor with a portion of the requested information. You claim that the remaining 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.

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 the doctrine of common-law privacy, which protects information if: (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) it 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 satisfied. *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. In part, the present request for all records involving the named juvenile implicates the juvenile's right to privacy. We note, however, that the requestor in this instance is the stepparent of the juvenile with the privacy interest. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect the juvenile's common-law privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the legal guardian of the juvenile at issue, the city may not withhold any of the requested information from him under section 552.101 in conjunction with common-law privacy. If the requestor is not the legal guardian of the juvenile at issue, to the extent the city maintains law enforcement records depicting the juvenile at issue as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In the event that the requestor is the legal guardian of the juvenile at issue, we will address your remaining argument against disclosure. Section 552.101 also encompasses information protected by section 58.007 of the Family Code. Law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

(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 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Section 58.007 is

applicable to information that relates to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.* § 58.007(c); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). The submitted information includes allegations of juvenile conduct that occurred after September 1, 1997. Thus, this information is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this information, which we have marked, is confidential under section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code. However, you have failed to demonstrate that any of the remaining information is subject to section 58.007 of the Family Code. Thus, the city may not withhold the remaining information under section 58.007 in conjunction with section 552.101.

In summary, if the requestor is not the legal guardian of the juvenile at issue, to the extent the city maintains law enforcement records depicting the juvenile at issue as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the legal guardian of the juvenile at issue, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The remaining requested information must be released.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 286324

Enc. Submitted documents

c: Mr. Cody Lower
5403 Westcliff Road
Killeen, Texas 76543
(w/o enclosures)