



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2007

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2007-15910

Dear Mr. Risley:

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# 296306.

The Victoria Police Department (the "department") received a request for all incident reports naming a specified individual since October 23, 2004, including one specified report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. 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 satisfied. *Id.* at 681-82. 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. 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). Further, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request, in part, requires the department to compile the arrest records of a named individual. This request for unspecified police reports implicates the named individual's right to privacy. To the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold these records under section 552.101 in conjunction with common-law privacy.

We note that you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of the individual's criminal history, the department may not withhold this information under section 552.101 in conjunction with common-law privacy. Therefore, we will address the submitted arguments for this information.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 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, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by

Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). We have reviewed the submitted information and find that a portion of it, which we have marked, involves conduct indicating a need for supervision that occurred after September 1, 1997. *See* Fam. Code § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Thus, this information is subject to section 58.007. We note, however, that the requestor is the mother of the juvenile suspect listed on the report. Under section 58.007(e), the requestor may inspect law enforcement records concerning her own child. *Id.* § 58.007(e). However, section 58.007(j) states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). A portion of the incident report at issue is subject to section 552.130 of the Government Code. Thus, we will address this exception.

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. *See* Gov't Code § 552.130 (a)(1). This exception protects personal privacy. Accordingly, the requestor has a special right of access to her own and her child's driver's license information under section 552.023 of the Government Code, and that information must be released. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, we have marked the Texas driver's license information that the department must withhold under section 552.130.

You claim section 552.108 for report number 2007-00042043, which was specifically requested. 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[.]" *Id.* § 552.108(a)(1). Generally,

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). You inform us that the information at issue relates to an open criminal investigation. Based upon your representation, we find that section 552.108(a)(1) is applicable to the information at issue. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes, among other things, a detailed description of the offense and the identification and description of the complainant. *See Open Records Decision No. 127* (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold report number 2007-00042043 under section 552.108(a)(1).

In summary, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, they must be withheld under section 552.101 in conjunction with common-law privacy. The department must withhold the Texas motor vehicle record information we have marked under section 552.130.¹ With the exception of basic information, the department may withhold report number 2007-00042043 under section 552.108(a)(1).² The requestor must be allowed to inspect the remaining submitted information under section 58.007 of the Family Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

¹We note, however, that because this requestor has a special right of access to some of the information at issue under section 552.023, in the event the department receives another request for this information from someone other than this requestor, the department must again ask this office for a decision whether the information is subject to public disclosure.

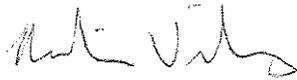
²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 challenge 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.

Sincerely,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 296306

Enc. Submitted documents

c: Ms. Vanessa Valdez
109 Angus Street
Victoria, Texas 77904
(w/o enclosures)