



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2008

Mr. Darrell G-M Noga
Fee, Smith, Sharp, & Vitullo, LLP
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2008-10759

Dear Mr. Noga:

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# 318234.

The City of Coppel (the "city") received a request for all incident reports pertaining to a specified address. You state that you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Initially, we note that portions of the submitted information do not pertain to the specified address. Thus, this information, which we have marked, is not responsive to this request. This ruling does not address the public availability of nonresponsive information, and the city is not required to release nonresponsive information in response to this request. Therefore, we will address your arguments with regard to the responsive 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 information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

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.

Id. § 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 at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* §§ 58.007, 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Upon review of the remaining information we find that the information we have marked involves juveniles engaged in delinquent conduct or conduct in need of supervision. *See id.* § 51.03(b)(3) (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”). It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find that the information we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.¹ The remaining information, however, does not list a juvenile as a suspect or offender; thus, the remaining information may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 also 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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

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

private citizen's criminal history is generally not of legitimate concern to the public. You claim that portions of the remaining information consist of a compilation of an individual's criminal history. However, upon review, we find that no portion of the remaining information is a compilation of criminal history information. Further, you have not demonstrated that the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

You claim that portions of the remaining information are subject to section 552.117. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). We note that the protection of section 552.117 is applicable only to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information held by their employers); *see also id.* § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, the remaining information consists of law enforcement records and are not records that the city holds in its capacity as an employer. Further, the remaining information does not contain the home address, telephone number, social security number, or family member information of an official or employee of a governmental body. Thus, no portion of the remaining information may be withheld under section 552.117(a)(1).

A portion of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 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." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the Texas motor vehicle record information we have marked in the remaining information.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with section 58.007 of the Family Code. The city must also withhold the Texas motor vehicle record information we have marked under section 552.130. The remaining responsive 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 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). If the governmental body does not file suit over 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).

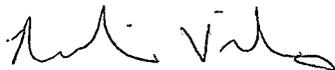
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 318234

Enc. Submitted documents

c: Mr. James Shumaker
1404 Ross Lane
Seagoville, Texas 75159
(w/o enclosures)