



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2009

Ms. Natasha Brooks
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2009-00205

Dear Ms. Brooks:

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# 331585.

The Midland Police Department (the "department") received a request for all reports and records filed by certain named persons against four named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excludes from her request "[a]ll Texas drivers license numbers, and the names and addresses of suspects that are not arrested in criminal cases." Thus, any Texas driver's license numbers, and any names and addresses of suspects not arrested in criminal cases, contained within the submitted documents are not responsive to the present request. We also note some of the submitted reports were not filed against any of the four named individuals. Thus, these reports, which we have marked, are also not responsive to the present request. Our ruling does not address this non-responsive information, and the department need not release it in response to the request.

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 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). This office has held the 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 the compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find the present request is partially a request for the compilation of the named individuals' criminal histories. However, we also find the requestor specifies, in her request, the names of the complainants in the reports she seeks. Accordingly, we have marked the one report we find constitutes a compilation of the named individuals' criminal histories and thus implicates the named individuals' rights to privacy. The department must withhold the report we have marked under section 552.101 of the Government Code on this basis. We will, however, address your remaining arguments for the rest of the responsive reports.

We note the types 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. *Indus. Found.*, 540 S.W.2d. at 683. Accordingly, the department must withhold the information we have marked in the remaining responsive reports under section 552.101 of the Government Code in conjunction with common-law privacy.

You also raise section 552.101 in conjunction with section 58.007 of the Family Code, which provides in pertinent 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007 makes confidential juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* §§ 51.02(2) (defining "child" for purposes of

section 58.007 as a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct), 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision," respectively, for purposes of the Family Code). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find one of the remaining responsive reports involves a juvenile engaging in delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, any of the exceptions in section 58.007 apply to this report. Therefore, the department must withhold this report, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You also claim some of the submitted information is protected by section 552.130 of the Government Code, which 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(a)(1)-(2). As noted above, the requestor excludes from her request Texas driver's license numbers. Thus, the Texas driver's license numbers in the information at issue are not responsive to the request and need not be released. We have marked a Texas license plate number that must be withheld under section 552.130. However, none of the remaining responsive information may be withheld on this basis.

In summary, the department need not release nonresponsive information in response to this request. The department must withhold the information we have marked under section 552.101 in conjunction with (1) the common-law right of privacy and (2) section 58.007 of the Family Code. The department must also withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released to the requestor.¹

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.

¹We note some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Should the department receive another request for these same records from a person who would not have a special right of access to the private information, the department should resubmit this same information and request another ruling from this office. *See id.* §§ 552.301(a), .302.

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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 331585

Enc. Submitted documents

c: Requestor
(w/o enclosures)