



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2009

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2009-02519

Dear Ms. McClellan:

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# 335832.

The Dallas Police Department (the "department") received a request for information related to a particular address from 1998 to the present. You claim portions of the requested information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹Although you cite section 552.101 of the Government Code for your argument to withhold the submitted social security numbers, we note that section 552.147 of the Government Code is the proper exception for this type of information.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This section encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides as follows:

(a) 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, audiotapes, videotapes, 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). You state report number 0180338-K was used or developed in an investigation of alleged child abuse. Based on this representation and our review, we find report number 0180338-K is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, report number 0180338-K and the information related to report number 0180338-K in the submitted 911 call sheets are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.³

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant language of 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:

³As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

- (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(c). 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 id.* § 51.02(2). You state, and we agree, that report number 0581519-K identifies a juvenile suspect alleged to have engaged in delinquent conduct that occurred after September 1, 1997. Thus, this report falls within the purview of section 58.007(c) of the Family Code. Since it appears that none of the exceptions to disclosure in section 58.007 apply, report number 0581519-K is confidential pursuant to section 58.007(c) and must be withheld in its entirety under section 552.101 of the Government Code.⁴

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. *See Open Records Decision No. 649 (1996)*. These sections make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone numbers of 911 callers in the submitted 911 call sheets that the department seeks to withhold. We conclude the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code to the extent it was furnished by a 911 service supplier. If the marked telephone numbers were not provided by a 911 service supplier, the marked information may not be withheld under section 552.101 in conjunction with section 772.318.

⁴As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

Section 552.101 also encompasses the common-law right of privacy, which protects information if it (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. Additionally, 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). Furthermore, 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). This office has found that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review of the information at issue, we agree that most of the information you have marked under common-law privacy is highly intimate or embarrassing and not of legitimate public concern. Therefore, except for the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing and may not be withheld under section 552.101 on the basis of common-law privacy.

Next, we address your argument under section 552.130 of the Government Code for the remaining information. 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. Accordingly, the department must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, pursuant to section 552.130 of the Government Code.

Finally, you assert that some of the remaining information is excepted from disclosure under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. We agree that

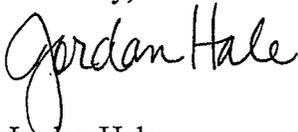
the department may withhold the social security number you have marked under section 552.147.⁵

In summary, the department must withhold report number 0180338-K and the information related to the report in the submitted 911 call sheets pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Report number 0581519-K must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the marked telephone numbers of the 911 callers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code to the extent the information was furnished by a 911 service supplier. Except where we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The marked Texas motor vehicle record information must be withheld pursuant to section 552.130 of the Government Code and the marked social security number may be withheld under section 552.147 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

⁵We note that 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.

Ref: ID# 335832

Enc. Submitted documents

cc: Requestor
(w/o enclosures)