



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2009

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-02819

Dear Mr. Phillips:

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# 336197 (Public Information Request No. 1010-09).

The Fort Worth Police Department (the "department") received a request for all incident reports involving named individuals. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 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 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). To demonstrate the applicability of common-law privacy, both prongs of this 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. 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You claim the present request requires the department, in part, to compile the criminal history of one of the named individuals. This request requiring the department to

compile unspecified criminal history records concerning an individual named in the request implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.<sup>1</sup>

We note, and you acknowledge, the submitted information contains reports that do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, these reports are not part of a compilation and may not be withheld under section 552.101 in conjunction with common-law privacy. Accordingly, we will address your remaining arguments against disclosure of these reports. Section 552.101 also encompasses information protected by other statutes, such as section 261.201(a) of the Family Code which provides in relevant part:

(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, 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 08-54444 was used or developed in an investigation under chapter 261. *See id.* § 261.001(1) (defining "abuse" for the purposes of chapter 261 of the Family Code); *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). Based on your representations and our review, we find report number 08-54444 is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find report number 08-54444 is confidential pursuant to section 261.201 of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure for this information.

<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument against disclosure for this information.

(1986) (predecessor statute).<sup>3</sup> Accordingly, report number 08-54444 must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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). 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). Report numbers 06-100846 and 08-107307 pertain to juvenile conduct indicating a need for supervision and delinquent conduct. *See id.* §§ 51.03(a) (defining “juvenile delinquent conduct” for the purposes of section 58.007), .03(b)(2) (defining “conduct indicating a need for supervision” to include a child’s voluntary absence from their home without the parent or guardian’s consent for a substantial length of time or without intent to return). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find report numbers 06-100846 and 08-107307 are confidential

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<sup>3</sup>We note the requestor, as a parent of one of the children who is the subject of reported abuse or neglect, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services (“DFPS”). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, “shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.” Fam. Code § 261.201(g).

pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>4</sup>

You assert the remaining reports are subject to section 552.108 of the Government Code. Section 552.108(a)(1) 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[.]” Gov’t Code § 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 state, and provide documentation showing, report numbers 07-102504 and 08-113682 pertain to criminal investigations that are open and pending and may be prosecuted by the Tarrant County District Attorney’s office. You also represent that release of these reports would interfere with law enforcement activities. Based on your representations and our review, we conclude the release of report numbers 07-102504 and 08-113682 would interfere with the detection, investigation, or prosecution of crime. *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). Thus, section 552.108(a)(1) is applicable to these reports.

However, section 552.108 is inapplicable to 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*. *See* 531 S.W.2d at 186-87; 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 numbers 07-102504 and 08-113682 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, those records must be withheld under section 552.101 in conjunction with common-law privacy. The department must withhold report number 08-54444 under section 552.101 in conjunction with section 261.201 of the Family Code and report numbers 06-100846 and 08-107307 under section 552.101 in conjunction with section 58.007 of the Family Code. Except for basic information, the department may withhold report numbers 07-102504 and 08-113682 under section 552.108(a)(1).

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.

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<sup>4</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure for this information.

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](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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 336197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)