



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 16, 2009

Ms. Elaine S. Hengen  
Senior Assistant City Attorney  
The City of El Paso  
Office of the City Attorney  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2009-03418

Dear Ms. Hengen:

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# 337315.

The El Paso Police Department (the "department") received a request for records pertaining to a named individual involving specified offenses for a specified time period. You claim the submitted 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 information you have submitted, some of which is a representative sample.<sup>1</sup>

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request because it does not involve one of the specified offenses or is not within the specified time period. The department need not release non-responsive information in response to this request, and this ruling will not address that 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 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

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<sup>1</sup>We 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.

the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You contend that this request for information requires the department to compile the named individual's criminal history. We note, however, that the request is for records of specific offenses involving the named individual. Therefore, we find that this is not a request for a compilation of the individual's criminal history, and the department may not withhold any of the submitted information on that basis under section 552.101 of the Government Code.

Section 552.101 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides in 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, 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 claim the incident reports in Exhibit G pertain to investigations of alleged child abuse, and we note that report number 00-041172 was also used or developed in an investigation of child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" as person under 18 years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Based on your representations and our review, we conclude that the reports in Exhibit G and report number 00-041172 fall within the scope of section 261.201 of the Family Code. 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, this information is confidential under section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2* (1986) (predecessor statute). Accordingly, the department must withhold the incident

reports in Exhibit G and report number 00-041172, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center (the “TCIC”). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090–.127. We have marked the CHRI that the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

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 incident report in Exhibit F relates to a pending criminal prosecution. Based upon this representation and our review, we conclude that the release of this report 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) is applicable to the incident report in Exhibit F.

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*. *See* 531 S.W.2d at 186-87. Thus, with the exception of the basic front page offense and arrest information, the department may withhold the report in Exhibit F under section 552.108(a)(1).

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."<sup>2</sup> Gov't Code § 552.130. Thus, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the incident reports in Exhibit G and report number 00-041172, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must also withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. With the exception of the basic information, the department may withhold the report in Exhibit F under section 552.108(a)(1) of the Government Code. Finally, the department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.<sup>3</sup>

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](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,

  
Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos: 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note that the remaining information contains social security numbers. 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#337715

Enc. Submitted documents

c: Requestor  
(w/o enclosures)