



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2009

Mr. B. Chase Griffith
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740 East Campbell Road Suite 800
Richardson, Texas 75081

OR2009-04736

Dear Mr. Griffith:

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# 339599.

The Town of Flower Mound (the "town"), which you represent, received a request for law enforcement information involving a named individual and a specified time interval. You claim that 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 information you submitted.

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 exception encompasses information that other statutes make confidential. Section 58.007 of the Family Code provides in 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender.

We conclude that the town must withhold some of the submitted information, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Although some of the remaining information also involves a juvenile offender, so as to fall within the scope of section 58.007(c), the requestor is a parent of the juvenile to whom the information pertains. The requestor has a right to inspect juvenile law enforcement records concerning her child pursuant to section 58.007(e) of the Family Code.

See id. § 58.007(e). Section 58.007(j) provides, however, that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your claims for the remaining information, including the information to which the requestor has a right of access under section 58.007(e), under sections 552.101 and 552.108.

Criminal history record information (“CHRI”) obtained from the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) is confidential under section 552.101 in conjunction with federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.”¹ Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See id.* § 411.089(b). We have marked CHRI that the town must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.²

You raise section 552.101 in conjunction with 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. *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

¹We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the “DPS”) under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2).

²We note that an individual’s own CHRI may be obtained from the DPS. *See* Gov’t Code § 411.083(b)(3).

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 private citizen's criminal history is generally not of legitimate concern to the public.

The instant request is for "all police narratives for all cases regarding [a named individual]." Thus, this request for unspecified law enforcement records requires the town to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent that the town maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the town must withhold any such information from the public under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the requestor may be an authorized representative of the individual who is the subject of this request for information. As the named individual's authorized representative, the requestor would have a right of access under section 552.023 of the Government Code to any information that the town would be required to withhold from the public to protect the individual's privacy. *See* Gov't Code § 552.023(a).³ Thus, if the requestor is the named individual's authorized representative, then information relating to the named individual may not be withheld from this requestor on privacy grounds under section 552.101. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

You also raise section 552.108 of the Government Code. In that regard, we note that the remaining information includes court documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court documents under section 552.108, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the town may not withhold any of the information in the marked court documents under section 552.108. Moreover, we find that none of the

³Section 552.023 provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

information in the court documents is expressly confidential under other law.⁴ Therefore, the marked court documents must be released pursuant to section 552.022(a)(17).

We also note that the remaining information includes the fingerprints of the individual who is the subject of this request for information. Section 560.003 of the Government Code provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). As a general rule, the exceptions to disclosure found in the Act do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, if the requestor is the named individual’s authorized representative, then the fingerprints that we have marked may not be withheld under section 552.108 of the Government Code and must be released to this requestor pursuant to section 560.002(1)(A). *See* ORD 481 at 4.

Section 552.108 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information is related to closed cases that concluded in a result other than a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is generally applicable to the remaining information.

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). *See* 531 S.W.2d at 186-88. The town must release basic information, including detailed descriptions of the offenses, even if the

⁴We note that common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (sexual assault victim’s privacy right not violated by release of information in public court document).

information does not literally appear on the front page of an offense or arrest report.⁵ See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

Although you claim that some of the basic information relating to case number 08-019903 is protected by common-law privacy under section 552.101 of the Government Code, we find that none of the information in question is intimate or embarrassing and not a matter of legitimate public interest. See *Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case). Therefore, the town must release basic information in accordance with section 552.108(c). See ORD 127 at 3-4. The town may withhold the rest of the submitted information under section 552.108(a)(2).

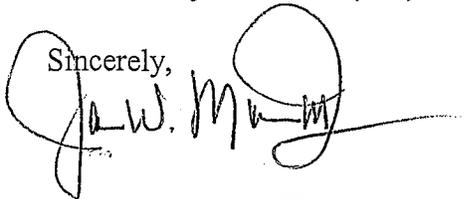
In summary: (1) the town must withhold the marked information that is confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (2) the town must withhold the marked CHRI under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (3) to the extent that the town maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the town must withhold any such information under section 552.101 in conjunction with common-law privacy, unless the requestor has a right of access to the individual's private information under section 552.023 of the Government Code; (4) the marked court documents may not be withheld under section 552.108 of the Government Code and must be released pursuant to section 552.022(a)(17) of the Government Code; (5) if the requestor is the named individual's authorized representative, the marked fingerprints may not be withheld under section 552.108 and must be released pursuant to section 560.002(1)(A) of the Government Code; and (6) the town may withhold the rest of the submitted information under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c).⁶

⁵We note that the submitted information includes an arrested person's social security number. 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. The requestor has a right to the social security number, however, if she is the arrested person's authorized representative. See generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

⁶Should the town receive another request for this same information from a person who would not have a right of access to otherwise confidential information, the town should resubmit this information and request another decision. See Gov't Code §§ 552.301(a), .302.

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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 339599

Enc: Submitted documents

c: Requestor
(w/o enclosures)