



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2009

Mr. Joseph J. Gorfida, Jr.  
Assistant City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2009-06901

Dear Mr. Gorfida:

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# 343764 (RPD ID# 09-124).

The Richardson Police Department (the "department") received a request for any information pertaining to three named individuals over a specified period of time, including two specified police reports. You state that you will provide some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 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 that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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 found that 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request, in part, seeks a copy of all police reports for three named individuals. We find that this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy.<sup>1</sup> However, we note that one of the individuals at issue is a minor and the requestor is the parent of the minor. Therefore, the requestor has a special right of access to information that would ordinarily be withheld to protect the minor's common-law privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Thus, report No. 08-115533 may not be withheld from the requestor under section 552.101 in conjunction with common-law privacy. We also note you have submitted reports that do not list the named individuals as suspects, arrestees, or criminal defendants. 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, as well as the specified reports.

You claim that the information you have marked in report No. 08-000791 is subject to common-law privacy. However, you have not provided arguments explaining how this information is highly intimate or embarrassing. *See id.* § 552.301(e)(1)(A) (providing that governmental body must provide sufficient arguments to establish applicability of claimed exceptions). Therefore, because the department has failed to demonstrate that the information at issue is protected by privacy and raises no other arguments against disclosure, the information you have marked in report No. 08-000791 must be released.

You raise section 552.101 in conjunction with section 261.201(a) of the Family Code, which provides as follows:

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

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

(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 represent, and the documents reflect, that report No. 08-118154 was used by the Child Protective Services Division ("CPS") of the Texas Department of Family and Protective Services in a child abuse and neglect investigation. *See id.* §§ 261.001(1) (definition of "child abuse"), .001(4) (definition of "child neglect"). Based on your representations, we agree this report is within the scope of section 261.201. You have not indicated CPS has adopted a rule that allows for the release of these records in this instance; therefore, we assume that no such regulation exists. Given that assumption, we find that report No. 08-118154 is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). As our ruling is dispositive, we need not address your remaining argument against disclosure of this police report.<sup>2</sup>

You raise section 552.101 in conjunction with section 58.007(c) of the Family Code for report No. 08-115533. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. 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* Fam. Code § 51.02(2). The relevant language of section 58.007 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:

- (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

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<sup>2</sup>We note that the requestor, as a parent of the child who is the subject of alleged abuse or neglect, may have a right of access to certain records maintained by 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).

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.

*Id.* § 58.007(c), (e), (j). Upon review, we agree report No. 08-115533 constitutes a law enforcement record of a juvenile runaway; therefore, we find that this report involves a juvenile engaged in conduct indicating a need of supervision. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). However, you acknowledge that the requestor is the parent of the juvenile at issue. Pursuant to section 58.007(e), the department may not withhold report No. 08-115533 from this requestor under section 58.007(c). *Id.* § 58.007(e). You inform this office that you have already released basic information from this report pursuant to section 58.007(e). *See* Gov't Code § 552.108(c) (requiring the release of basic information about an arrested person, and arrest, or a crime); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information may not be withheld from information that is excepted from disclosure under section 552.108 of the Government Code. We note section 58.007(j) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). However, in this instance, you do not raise section 552.108 or make any additional arguments explaining how this report is excepted

from required disclosure under chapter 552 of the Government Code or other law. Therefore, as you raise no other exceptions against disclosure of this information, report No. 08-115533 must be released to this requestor in its entirety.<sup>3</sup>

You assert that report No. 09-003495 is excepted from disclosure under 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). A governmental body claiming section 552.108 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 represent that report No. 09-003495 pertains to an active criminal investigation being conducted by the department. Based on your representation and our review of the submitted documents, we conclude that the release of this information 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) (court delineates law enforcement interests that are present in active cases).

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*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold report No. 09-003495 under section 552.108(a)(1) of the Government Code.

You assert that portions of the remaining reports at issue are subject to section 552.130 of the Government Code. Section 552.130 excepts from public 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. *See* Gov’t Code § 552.130(a)(1)-(2). Accordingly, the department must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of report No. 08-115533, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy. The department must withhold report No. 08-118154 under section 552.101 in conjunction with section 261.201 of the

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<sup>3</sup>Because this requestor has a statutory right of access to this report, the department must again seek a decision from this office if it receives another request for this report from a different requestor.

Family Code. Except for basic information, the department may withhold the report you have marked under section 552.108(a)(1) of the Government Code. From the remaining reports at issue, the department must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. The remaining information must be released.<sup>4</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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 343764

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note that the information being released 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.