



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2009

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2009-07824

Dear Ms. Graham:

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# 346244.

The Mesquite Police Department (the "department") received a request for all police reports involving a specified address. You state you have released most of the responsive information to the requestor. You claim the submitted reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. You claim Exhibit 2 is confidential under section 552.101 in conjunction with 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, [...], 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 the records in Exhibit 2 were used or developed in an investigation of child neglect under chapter 261 of the Family Code. *See id.* § 261.001(4) (definition of "neglect"). You do not indicate the investigating agency has adopted a rule that governs the release of these records in this situation; therefore, we assume no such regulation exists. Given that assumption and our review, we agree these records are within the scope of section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 encompasses section 58.007 of the Family Code. 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). You assert all the records in Exhibit 3 and the highlighted information in Exhibit 4 are subject to section 58.007. Upon review, we find that one of the records in Exhibit 3 and the highlighted information Exhibit 4 are not subject to section 58.007(c) as these are not records of juveniles engaged in delinquent conduct or conduct indicating a need for supervision as those terms are defined in the Family Code. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). The remaining records in Exhibit 3, however, are law enforcement records of juveniles engaged in delinquent conduct or conduct indicating a need for supervision. It does not appear that any of the exceptions in section 58.007 apply to these records. Therefore, these records are generally confidential pursuant to section 58.007(c) of the Family Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 satisfied. *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 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 ones criminal history). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We have marked the criminal history information in Exhibit 4 that is generally protected by common-law privacy.

The requestor, in this instance, is a representative of the Garland Housing Authority, who is requesting the reports for the purpose of lease enforcement and possible eviction. Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides that "[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). Section 1437d(q)(1)(C) provides that "[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality." *Id.* § 1437d(q)(1)(C). In Open Records Decision No. 655 (1997), this office concluded these federal statutes authorize local housing authorities to obtain the criminal history record information ("CHRI") of adult and juvenile tenants. CHRI consists of "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." Gov't Code § 411.082(2). However, the federal law limits the purposes for which a public housing authority may request CHRI. It provides, among other things, that (1) public housing agencies may receive CHRI of adult and juvenile applicants or tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A), (C); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI "[n]otwithstanding any other provision of law." 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 261.201 of the Family Code. *Cf. Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). However, as previously discussed, section 1437d(q)(1)(C) allows a housing authority to obtain access

to juvenile CHRI “only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” 42 U.S.C. § 1437d(q)(1)(C). Juvenile justice information is confidential but may be released to any “entity to which [the Texas Department of Public Safety (“DPS”)] may grant access to adult criminal history records as provided by Section 411.083, Government Code[.]” Fam. Code § 58.106(a)(2). Section 411.083(b)(2) of the Government Code states that DPS is required to provide CHRI to a non-criminal justice agency authorized to receive CHRI pursuant to federal statute, executive order, or state statute. Gov’t Code § 411.083(b)(2). Because housing authorities are authorized to obtain adult CHRI under sections 1437d(q)(1)(A) and 411.083(b)(2), they are also authorized to obtain similar information regarding juveniles. The housing authority, however, may only obtain and use juvenile information in accordance with section 1437d(q)(1)(A). *See also id.* § 411.084(2)(B) (stating CHRI may only be disclosed or used as authorized or directed by another statute). Thus, any CHRI of the adult tenant or her children that is contained within Exhibits 2, 3, and 4 must be released to this requestor in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655. *See also* 24 C.F.R. § 5.903 (describing public housing authorities’ access to criminal records). The remainder of Exhibit 2 and, with the exception of the marked document, the rest of Exhibit 3 must be withheld under section 552.101 of the Government Code.

We now turn to your arguments for the remainder of Exhibit 4. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make only the originating telephone numbers and addresses of 9-1-1 callers that are 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 3.3 million. You represent the City of Mesquite is part of an emergency communication district established under section 772.118. You also represent the telephone numbers you have marked in Exhibit 4 were provided by a 9-1-1 service supplier. Based on your representations and our review, we conclude the department must withhold the marked telephone numbers under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.¹

You also claim some of the marked information in Exhibit 4 is protected by common-law privacy. As noted above, to demonstrate the applicability of common-law privacy, a governmental body must establish that the information is both highly intimate or embarrassing and is of no legitimate public interest. *Indus. Found.* at 681-82. The Texas Supreme Court found the following types of information to be intimate or embarrassing: information relating to sexual assault, pregnancy, mental or physical abuse in the workplace,

¹Because section 772.118 is dispositive, we need not address your arguments that this information is also confidential under section 771.061 of the Health and Safety Code.

illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). We agree the marked lien information is personal financial information for which there is no legitimate public interest. Accordingly, the lien information must be withheld under common-law privacy. However, you have failed to demonstrate that there is no legitimate public interest in the alleged criminal activity you have marked. Thus, this information is not protected by privacy and must be released.

You claim the marked Texas motor vehicle record information is excepted from disclosure under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the marked Texas motor record vehicle information under section 552.130.

Finally, you claim the marked social security number is excepted from disclosure under section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.² *Id.* § 552.147. Therefore, the department may withhold the marked social security number under section 552.147 of the Government Code.

In summary, we have marked the document in Exhibit 3 that must be released. Any CHRI of the adult tenant or her children that is contained within Exhibits 2, 3, and 4 must be released to this requestor in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655. The remaining information in Exhibits 2 and 3 must be withheld under section 552.101. From Exhibit 4, the department must withhold the originating telephone numbers of 9-1-1 callers under section 772.118; the lien information under section 552.101 in conjunction with common-law privacy; and the Texas motor vehicle record information under section 552.130. The social security may be withheld under section 552.147. The remaining information in Exhibit 4 must be released.

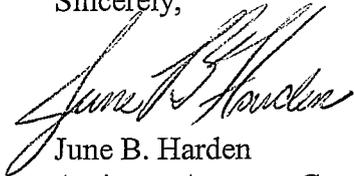
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²Section 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. *Id.* § 552.147(b).

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,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 346244

Enc. Submitted documents

cc: Requestor
(w/o enclosures)