



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-10278

Dear Ms. Valkavich:

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# 351069 (COSA File No. 09-0623).

The City of San Antonio (the "city") received five requests from the same requestor for disciplinary, employment, and training records for five San Antonio police officers. You state the city will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has agreed to the redaction of "information such as the officer's home address, social security number, telephone number, [and] personal family member information of the officer listed in accordance with § 552.117 and § 552.1175" and "photographs in accordance with § 552.119." Therefore, any of this information within the submitted documents is not responsive to the present requests for information. Our ruling does not address this non-responsive information, and the city need not release this information in response to the requests.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information made confidential by other statutes. This section encompasses former

section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile criminal conduct occurring before January 1, 1996, are governed by former section 51.14 of the Family Code, which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). In this instance, some of the submitted information involves juvenile conduct of a child that occurred prior to January 1, 1996. Therefore, we determine former section 51.14(d) is applicable to this information, which we have marked. The city must withhold this marked information pursuant to section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. You have failed to demonstrate how any of the remaining information constitutes a juvenile law enforcement record for the purposes of former section 51.14, thus none of the remaining information may be withheld on that basis.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under this statute:

- (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). You assert section 58.007 for portions of the remaining information. However, some of the information at issue consists of an internal affairs investigation. An internal affairs investigation is not a juvenile law enforcement record for the purposes of section 58.007. Furthermore, the only juveniles listed in the internal affairs investigation are witnesses. Section 58.007(c) does not apply to information regarding juvenile victims or witnesses. Therefore, none of the information you marked in the internal affairs investigation is confidential under section 58.007 of the Family Code. Additionally, you have failed to demonstrate how any of the remaining information constitutes a juvenile law enforcement record for the purposes of section 58.007. Therefore, none of the remaining information may be withheld on that basis.

Section 552.101 also encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the city to be part of an emergency communication district established under section 772.318. You claim that portions of the submitted information in the internal affairs investigation, in the mobile data transmission printouts, and on the 9-1-1 recording contain telephone numbers and addresses subject to section 772.318. We note, however, that the 9-1-1 recording does not contain originating telephone numbers or addresses subject to this section. Furthermore, you do not inform us, and it is not otherwise clear, that the information you have marked is the originating telephone numbers and addresses of 9-1-1 callers and was furnished by a 9-1-1 service supplier. Therefore, we are forced to rule conditionally. The city must only withhold the telephone numbers and addresses it has marked under section 552.101 in conjunction with section 772.318 of the Health and Safety Code if that information constitutes the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a 9-1-1 service

supplier. However, if that information is not the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier, the city may not withhold it under section 772.318.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Gov't Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* 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. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The term CHRI does not include driving record information maintained by the DPS. *Id.* § 411.082(2)(B). Furthermore, we note that an individual's current involvement in the criminal justice system, including active warrant information, does not constitute CHRI. Upon review, we find a portion of the submitted information, which we have marked, constitutes CHRI and must be withheld pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. However, the remaining information at issue pertains to active warrant information and driving record information. Thus, none of the remaining information constitutes CHRI for the purposes of section 411.083, and none of the remaining information may be withheld on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps) and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). 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. However, as previously noted, records related to routine traffic violations are not considered criminal history record information. *See* Gov't Code § 411.082(2)(B) (CHRI does not include driving information). Furthermore, an individual's current involvement in the criminal justice system, including active warrant information, does not constitute criminal history information for the purposes of section 552.101. Upon review, we find a portion of the remaining information constitutes highly intimate or embarrassing information of no legitimate public concern and the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. You have failed to demonstrate how any of the remaining information constitutes highly intimate or embarrassing information of no legitimate public concern. Thus, none of the remaining information may be withheld on that basis.

Section 552.130 of the Government Code 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." Gov't Code § 552.130. Section 552.130 does not apply to out-of-state motor vehicle record information. Accordingly, the city must withhold the Texas motor vehicle and driver's license information we have marked under section 552.130 of the Government Code. The remaining information you have marked either does not constitute motor vehicle record information or belongs to an out-of-state vehicle, and thus may not be withheld under section 552.130.

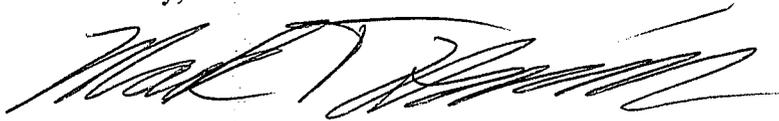
In summary, the city must withhold the information we have marked under section 552.101 in conjunction with former section 51.14 of the Family Code. The city must withhold the telephone numbers and addresses it has marked under section 552.101 in conjunction with section 772.318 of the Health and Safety Code to the extent that this information was supplied by a 9-1-1 service provider to the emergency communication district; otherwise this information must be released. The city must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked under section 552.130. The remaining information must be released.¹

¹We note the information being released includes 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.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 351069

Enc. Submitted documents

c: Requestor
(w/o enclosures)