



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2009

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2009-16210

Dear Ms. Champion:

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# 366207.

The Victoria Police Department (the "department") received a request for any incident reports involving theft, burglary, vandalism, or criminal mischief and any pawn shop transactions involving three named individuals from January 1, 2002 to the present. You claim the requested information is 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 considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 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.

In this instance, the request is, in part, for reports pertaining to three named individuals during a specified time period. We find that this request requires the department to compile unspecified law enforcement records concerning the named individuals. Such a request implicates the named individuals' privacy rights. Thus, to the extent the department maintains law enforcement records depicting the named individuals as either suspects, arrestees, or criminal defendants the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, you have submitted information that does not relate to the named individuals as suspects, arrestees, or criminal defendants. These reports do not implicate the privacy interests of the named individuals. Thus, we will address your arguments against the disclosure of this information.

Section 552.101 of the Government Code 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 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(c) 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 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.

Id. § 58.007(c). We note that report numbers 2005-00043793 and 2009-00015217 involve juvenile delinquent conduct occurring after September 1, 1997. *See id.* §§ 51.03(a) (defining

“juvenile delinquent conduct” for the purposes of section 58.007). None of the exceptions in section 58.007 appear to apply. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

In summary, to the extent the department maintains law enforcement records depicting the named individuals as either a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction section 58.007 of the Family Code.

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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 366207

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹As our ruling is dispositive of this information, we need not address your remaining arguments against its disclosure.