



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2010

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-00870

Dear Ms. Middlebrooks:

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# 367724 (DPD PIR No. 09-9327).

The Dallas Police Department (the "department") received a request for four hundred and forty seven specified police reports, including supplements. You have redacted a social security number pursuant to section 552.147 of the Government Code.¹ You claim 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 representative sample of information.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other

¹Section 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. *See* Gov't Code § 552.147.

²We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than submitted to this office.

statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. 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 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). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2)(A). Report numbers 0192605-W, 0196833-W, 0198406-W, 0197018-W, and 0197043-W constitute law enforcement records relating to juveniles engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of section 58.007). None of the exceptions in section 58.007 appear to apply; therefore, report numbers 0192605-W, 0196833-W, 0198406-W, 0197018-W, and 0197043-W are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.³

Section 552.101 of the Government Code 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. This office has found medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy.

³As our ruling for this information is dispositive, we do not address your remaining argument against disclosure of portions of this information.

See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find the information we have marked in report numbers 0193943-W, 0191856-W, 0191702-W, and 0191081-W is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold the information we have marked in report numbers 0193943-W, 0191856-W, 0191702-W, and 0191081-W under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you have marked in report numbers 0190836-W and 0230355-W does not contain highly intimate or embarrassing facts or is of legitimate public interest; thus, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.108(a) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, 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 state the information you have marked in the remaining reports relates to pending criminal investigations and prosecutions. Based upon your representations, we conclude 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we agree section 552.108(a)(1) of the Government Code is generally applicable to this information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic, front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, a detailed description of the offense. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note you have marked the entire narrative portion of report

numbers 0192917-W and 0198476-W as information you seek to withhold under section 552.108. However, the requestor seeks only the narrative portion of these reports; thus, the department may not withhold the narratives in their entirety. *See* ORD 127. Accordingly, we determine the department must release sufficient portions of the narrative section of the reports at issue to satisfy the required release of basic information pursuant to *Houston Chronicle*. The department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code.

You seek to withhold a portion of the marked narrative of report number 0192917-W and portions of report numbers 0191856-W and 0191000-W under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.⁴

You also seek to withhold a portion of the marked narrative of report number 0198476-W under section 552.101 of the Government Code in conjunction with common-law privacy. As previously discussed, a governmental body must show the information it seeks to withhold contains highly intimate or embarrassing facts, such that its publication would be highly objectionable to a reasonable person, and the information is not of legitimate concern to the public in order to demonstrate the applicability of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). As noted, this office has found medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470, 455. Upon review of report number 0198476-W, we find its narrative contains information that is highly intimate or embarrassing and of no legitimate public concern. The department must withhold the information we have marked within the narrative of report number 0198476-W under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold report numbers 0192605-W, 0196833-W, 0198406-W, 0197018-W, and 0197043-W under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must also withhold the information we have marked in the narratives of report numbers 0193943-W, 0191856-W, 0191702-W, and 0191081-W under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code, except enough information from the narratives of report numbers 0192917-W and 0198476-W must be

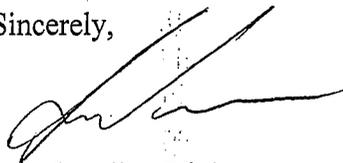
⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

released to suffice as basic information. The department must withhold the Texas motor vehicle record information you have marked in the narrative of report number 0192917-W and report numbers 0191856-W and 0191000-W under section 552.130 of the Government Code. The department must also withhold the information we have marked in the narrative of report number 0198476-W under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 367724

Enc. Submitted documents

c: Requestor
(w/o enclosures)