



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2010

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2010-01278

Dear Ms. Brewer:

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# 368259.

The Wylie Police Department (the "department"), which you represent, received a request for all incident reports pertaining to a named individual from January 1, 2008 to the date of the request and information pertaining to specified arrests of two named individuals. You claim the submitted 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. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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. This exception 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 demonstrated. *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. 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The request, in part, seeks all incident reports pertaining to a named individual during a specified period. We find this aspect of the request requires the department to compile this named individual's criminal history and thereby implicates the named individual's privacy interests. Thus, to the extent the department maintains records listing the named individual in the first part of the request as a suspect, arrestee, or criminal defendant, the department must withhold this information under section 552.101 in conjunction with common-law privacy. However, the requestor also seeks reports pertaining to two specified arrests involving the other two named individuals. We find this part of the request does not implicate the privacy interests of the named individuals involved in the specified arrests; therefore, we address your arguments for this information.

Section 552.101 of the Government Code also encompasses information made confidential by statute such as section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). The relevant part 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 Subchapters B, D, and E.

Id. § 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. *See id.* § 51.02(2). Upon review, we find

report numbers 08008429, 08000878, and 0915830A constitute confidential law enforcement records under section 58.007(c). Moreover, it does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, the department must withhold report numbers 08008429, 08000878, and 0915830A in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by section 261.203, 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, audiotapes, and videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Report numbers 09010420 and 09016881 relate to investigations of alleged or suspected abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Upon review, we find this information falls within the scope of section 261.201. You do not indicate the department has adopted a rule governing the release of this type of information. Therefore, we find report numbers 09010420 and 09016881 are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must withhold these reports in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

Section 552.108(a)(1) 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). A governmental body

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

²As our ruling is dispositive for this information, we do not address your remaining arguments against its disclosure.

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 remaining information at issue relates to the pending criminal prosecution of an assault. You state one suspect was adjudicated and found guilty but charges against the other suspect in this matter are still pending. Based on this representation, 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. 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).

However, 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. You must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information at issue under section 552.108(a)(1).³

In summary, to the extent the department maintains records listing the named individual in the first part of the request as a suspect, arrestee, or criminal defendant, they must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report numbers 08008429, 08000878, and 0915830A in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and report numbers 09010420 and 09016881 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the remaining information at issue may be withheld under section 552.108 of the Government Code.

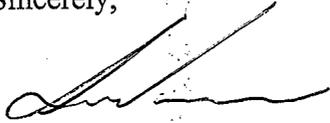
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

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

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# 368259

Enc. Submitted documents

c: Requestor
(w/o enclosures)