



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-04530

Dear Ms. Sandoval-Walker:

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# 375591.

The El Paso Police Department (the "department") received a request for any and all police records for a named individual. You state you have released reports where the named individual is a complainant, witness, or was involved in a traffic accident. You claim that the submitted information is 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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 met. *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. In this instance, the request is for all reports pertaining to the named individual. Thus, we find the request requires the department to compile unspecified criminal history records concerning the named individual. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold these records under section 552.101 in conjunction with common-law privacy. We note you have submitted a report, case number 01-156370, that does not list the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a compilation and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address your argument against the disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as 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(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). 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 subchapter B, D, and E.

Id. § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct indicating a need for supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of the Family Code). 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 id.* § 51.02(2). Upon review, we agree case number 01-156370 involves a juvenile engaged in conduct in need of supervision that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply; therefore, case number 01-156370 is confidential pursuant to section 58.007(c) of the Family Code, and must be withheld under section 552.101 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold these records under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold case number 01-156370 under section 552.101 in conjunction with section 58.007 of the Family Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 375591

Enc. Submitted documents

c: Requestor
(w/o enclosures)