



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2010

Mr. B. Chase Griffith
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-08291

Dear Mr. Griffith:

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# 381870.

The Little Elm Police Department (the "department"), which you represent, received a request for police reports pertaining to any of three named individuals or a specified address.¹ You state some of the requested information has been released. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 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

¹The request indicates the department sought clarification of the request. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

(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. 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. The present request, in part, requires the department to compile unspecified law enforcement records concerning three named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting any of the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

However, we note the first individual listed in the request is the requestor's spouse. Further, the requestor is the stepparent of the juvenile listed second in the request. Thus, the requestor may be acting as the authorized representative of either or both of these individuals. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See Gov't Code* § 552.023. Accordingly, to the extent the requestor is the authorized representative of either the first or second individual listed in the request, the requestor has a special right of access to the compilation of such individual's criminal history, to the extent it exists. To the extent the requestor has a special right of access, we will address your remaining arguments against disclosure. We note you have submitted records that do not list any of the named individuals as suspects, arrestees, or criminal defendants. Because this information is not part of a compilation of an individual's criminal history, the department may not withhold it under section 552.101 on that basis. However, we will also address your remaining submitted arguments for this information.

Common-law privacy also protects the types of information found to be intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.*, 540 S.W.2d at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. You raise section 552.101 in conjunction with common-law privacy for report

numbers 2008050691, 1000019693, and 0900021174. In this instance, the requestor knows the identity of the individual involved, as well as the nature of the incident investigated, in report number 2008050691, as well as report number 0900021409. Therefore, withholding only the subject individuals' identities or certain details of these incidents from the requestor would not preserve the subject individuals' common-law privacy rights. Accordingly, we agree these reports, which we have marked, are generally subject to section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it appear, that the requestor knows the identity of the individual involved, as well as the nature of the incident investigated, in report numbers 1000019693 and 0900021174. Consequently, these reports may not be withheld in their entirety on the basis of common-law privacy.

Furthermore, the requestor may be the authorized representative of either one or both of the subject individuals in report numbers 2008050691 and 0900021409. *See* Gov't Code § 552.023. Accordingly, to the extent the requestor does not have a right of access to this information pursuant to section 552.023, the department must withhold these reports in their entirety under section 552.101 in conjunction with common-law privacy. To the extent the requestor has a right of access pursuant to section 552.023, the department may not withhold this information based on the privacy interests of the individuals at issue.

We note the remaining information contains a CR-3 accident report completed pursuant to chapter 550 of the Transportation Code. Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided two of the three pieces of required information for the submitted accident report. Accordingly, the department must withhold the accident report, which we have marked, under section 552.101 in conjunction with section 550.065(b).²

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 provides:

²As our ruling is dispositive, we need not address your argument against disclosure as it pertains to this information.

(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.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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). We agree some of the submitted reports, which we have marked, consist of law enforcement records relating to juveniles engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of

section 58.007). As it does not appear any of the exceptions to confidentiality under section 58.007(e) apply to report number 1000009016, it must be withheld in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code.³

However, if the requestor is acting as his stepchild's authorized representative or legal guardian, he may inspect or copy any law enforcement records concerning his stepchild under section 58.007(e). *Id.* § 58.007(e). However, section 58.007(j)(2) also provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your claims under section 552.108 of the Government Code for two of the reports at issue, as well as for the remaining information. Further, section 58.007(j)(1) states any personally identifiable information concerning other juvenile offenders must be redacted. *See id.* § 58.007(j)(1). Accordingly, the department must withhold the information we have marked in the remaining reports at issue under section 552.101 in conjunction with section 58.007(j)(1).

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert portions of the remaining information relate to currently pending criminal investigations or prosecutions. Based on your representations, we conclude the release of this information, which we have marked, 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, section 552.108(a)(1) is generally applicable to these reports.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *Id.* You assert portions of the remaining information, which we have marked, pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is generally applicable to these reports.

³As our ruling is dispositive, we need not address your argument against disclosure as it pertains to this information.

We note 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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the reports we have marked under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code.

We note portions of the narrative section of report numbers 0900021174 and 0900021199, as well as portions of report number 1000019693, are subject to common-law privacy. As previously noted, common-law privacy protects the types of information found to be intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*. See 540 S.W.2d at 683. We have marked portions of the information at issue that are intimate or embarrassing and not of legitimate public interest. As noted above, the requestor may be acting as the subject individuals' authorized representative. See Gov't Code § 552.023. Accordingly, if the requestor is not acting as these individuals' authorized representative, the department must withhold (1) the information we have marked in report number 1000019693 under section 552.101 in conjunction with common-law privacy, and (2) in releasing basic information from report numbers 0900021174 and 0900021199, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. If the department determines the requestor is acting as the subject individuals' authorized representative, the information at issue may not be withheld under section 552.101 in conjunction with common-law privacy.

We note a portion of the remaining information is subject to section 552.130 of the Government Code.⁴ Section 552.130 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. See *id.* § 552.130(a)(1). We have marked Texas driver's license numbers that are generally subject to section 552.130. The department must withhold the Texas driver's license number pertaining to the individual other than the requestor's spouse under section 552.130.⁵ If the requestor is not acting as his spouse's authorized representative, the department must also withhold the remaining Texas driver's license number under section 552.130. If the

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

requestor is acting as the authorized representative of his spouse, he has a right of access to her Texas driver's license number under section 552.023, and the department may not withhold that information under section 552.130. *See id.* § 552.023(a).

In summary, to the extent the requestor is not acting as the authorized representative of a named individual under section 552.023 of the Government Code, the department must withhold any law enforcement records depicting such individual as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy. To the extent the requestor is not acting as the authorized representative of the subject individuals in report numbers 2008050691 and 0900021409, the department must withhold these reports in their entirety under section 552.101 in conjunction with common-law privacy. The department must withhold the marked CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department must withhold report number 1000009016 under section 552.101 in conjunction with section 58.007(c) of the Family Code. If the requestor is acting as his stepchild's authorized representative or legal guardian, then, in releasing juvenile law enforcement records pertaining to the requestor's stepchild, the department must withhold any personally identifiable information concerning other juvenile offenders, which we have marked, under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code. With the exception of basic information, the department may withhold the reports we marked under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. If the requestor is not acting as the subject individuals' authorized representative, the department must withhold (1) the information we have marked in report number 1000019693 under section 552.101 in conjunction with common-law privacy, and (2) in releasing basic information from report numbers 0900021174 and 0900021199, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Finally, the department must withhold the marked Texas driver's license number pertaining to an individual other than his spouse under section 552.130 of the Government Code. If the requestor is not acting as his spouse's authorized representative, the department must also withhold the remaining marked Texas driver's license number under section 552.130. Any remaining information must be released to this requestor.⁶

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

⁶Should the department receive another request for these same records from a person who would not have a right of access under section 552.023 to the information being released, the department should resubmit these records and request another decision. *See Gov't Code* §§ 552.301(a), .302.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/eeg

Ref: ID# 381870

Enc. Submitted documents

c: Requestor
(w/o enclosures)