



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2010

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-08597

Dear Mr. Reinwand:

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# 382526 (Ref. No. W000470-032910).

The Arlington Police Department (the "department") received a request for all police reports pertaining to a named individual during a specified time period. You claim 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 established. *See 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history

information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the department to compile unspecified police records concerning the named individual. Therefore, to the extent the department maintains law enforcement records depicting the named individual as suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. You have submitted incident report numbers 06-64597, 04-69350, and 04-69171, which do not involve the named individual as a suspect, defendant, or arrestee. These reports do not constitute a criminal history compilation and may not be withheld under section 552.101 and common-law privacy on that basis. Thus, we will address your remaining argument against disclosure of these incident reports.

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, which provides in pertinent part 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). Upon review, we agree incident report numbers 06-64597, 04-69350, and 04-69171 involve juvenile delinquent conduct, so as to fall within the scope of section 58.007(c). *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of the Family Code); *see also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Therefore, we find that incident report numbers 06-64597, 04-69350, and 04-69171 are confidential and must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, (1) to the extent the department maintains law enforcement records depicting the named individual as suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the department must withhold incident report numbers 06-64597, 04-69350, and 04-69171 under section 552.101 of the Government Code in conjunction with section 58.007(c) 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 382526

Enc. Submitted documents

c: Requestor
(w/o enclosures)