



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Mr. C. Corey Fickes
Taylor Olson Adkins Sralla Elam L.L.P.
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OR2010-10410

Dear Mr. Fickes:

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# 386426.

The Southlake Department of Public Safety (the "department"), which you represent, received a request for eleven specified offense reports and all arrest reports pertaining to two named individuals, one of whom is the client of the requestor. You state you have released some of the requested information with redactions pursuant to Open Records Decision No. 684 (2009).¹ You claim that portions of the submitted information are 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 that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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). This office has found that 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).

¹See Open Records Decision No. 684 (previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.)

Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note that a request for specific records does not implicate an individual's common-law right to privacy. Accordingly, the department may not withhold the specifically requested offense reports under common-law privacy as part of a compilation. However, the present request, in part, also seeks a copy of all police reports for two named individuals. We find that this request for unspecified law enforcement records implicates the named individuals' rights to privacy. However, we note that only one of the named individuals is listed as a suspect, arrestee, or criminal defendant in the unspecified incident reports. Further, we note that the requestor represents the individual listed as a suspect, arrestee, or criminal defendant in those reports. Therefore, the requestor has a special right of access to information that would ordinarily be withheld to protect this individual's common-law privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Thus, those records may not be withheld from the requestor under section 552.101 in conjunction with common-law privacy. We also note you have submitted reports that do not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the named individuals' privacy concerns and may not be withheld under section 552.101 on that basis. Thus, none of the submitted reports may be withheld as part of a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, we will address your remaining arguments against disclosure of these reports.

You raise section 552.101 in conjunction with section 261.201(a) of the Family Code, which provides as follows::

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information

concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). You assert that incident reports 08SP040861, 08SP016079, 07SP021932, 2005-03479, and 2007-4639 are excepted from disclosure under section 261.201. However, you do not explain, and the reports do not reflect, how incident reports 08SP040861, 08SP016079, and 07SP021932 and were used or developed in an investigation under chapter 261. Since you have failed to demonstrate that section 261.201 of the Family Code is applicable to these reports, the department may not withhold incident reports 08SP040861, 08SP016079, and 07SP021932 under section 552.101 of the Government Code on this basis. We find, however, that incident reports 2005-03479 and 2007-4639 are within the scope of section 261.201(a). *See id.* § 261.001(a); *see also id.* § 261.201(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). However, we note that information may not be withheld on the basis of section 261.201(a) from a parent of a child who was the victim of alleged or suspected neglect, unless the parent is alleged to have committed the neglect. *See id.* § 261.201(k). In this instance, the requestor is the representative of a parent of the child victim identified in the reports at issue and is not alleged to have committed the abuse. Thus, incident reports 2005-03479 and 2007-4639 may not be withheld from the requestor under section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l) states that identifying information of the reporting party must be withheld. The department must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(l)(3).

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *Indus. Found.*, 540 S.W.2d 668 at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Generally, only highly intimate information that implicates an individual's privacy is withheld. However, in certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of the incident, the entire report must be withheld to protect the individual's privacy.

The submitted information reflects that the requestor's client knows both the nature of one of the incidents to which the information pertains and the identity of the individual involved in that incident. Therefore, withholding only the identity of the individual involved or certain details of that incident from this requestor would not preserve the individual's common-law right to privacy. We therefore conclude that the information relating to that incident, which we have marked, must be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

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. See Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.302(e)(1)(A). You state that incident reports 09SP019110, 09SP018442, and 08SP044581 pertain to closed investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that the department has demonstrated that section 552.108(a)(2) is applicable to these incident reports. Therefore, we conclude the department may generally withhold incident reports 09SP019110, 09SP018442, and 08SP044581 under section 552.108(a)(2) of the Government Code.

We note, and you acknowledge, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *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). See also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that the information held to be public in *Houston Chronicle* includes a detailed description of the offense. Therefore, with the exception of basic information, which you state you have already released, the department may withhold incident reports 09SP019110, 09SP018442, and 08SP044581 under section 552.108(a)(2) of the Government Code.

We note some of the remaining information contains criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Section 552.101 of the Government Code also encompasses CHRI.

Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Upon review, we find that a portion of the remaining information consist of confidential CHRI. Accordingly, the department must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Next, we note some of the remaining information is also excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. In addition to the type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*, this office has also found that certain kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 545 (1990). The information we have marked in the remaining information is confidential under common-law privacy and must be withheld under section 552.101 on this basis.

We note some of the remaining information contains motor vehicle information.² Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.³

In summary, the department must withhold the identifying information of the reporting party in incident reports 2005-03479 and 2007-4639, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must withhold the report we have marked to be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold reports 09SP019110, 09SP018442, and 08SP044581 under section 552.108(a)(2) of the Government Code. The department must withhold the CHRI we have marked in the remaining information under section 552.101 of the Government Code in conjunction with

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

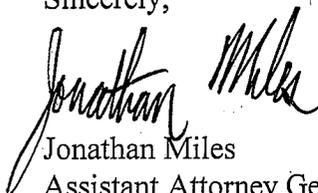
³Open Records Decision No. 684 authorizes governmental bodies to withhold Texas driver's license numbers under section 552.130 of the Government Code without the necessity of requesting an attorney general decision.

section 411.083 of the Government Code. The department must withhold the information we have marked in the remaining reports under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.⁴ The remaining information must be released.⁵

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 386426

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the remaining information contains social security numbers of an individual other than the requestor's client. Section 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. See Gov't Code § 552.147.

⁵We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different request, the department must again seek a ruling from this office.