



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
El Paso City Prosecutor's Office
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2010-12032

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# 389690 (El Paso Case Number 2010-06-08-AG).

The El Paso Police Department (the "department") received a request for information pertaining to a specified address, the requestor, and another named individual during a specified time period. 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.

Initially, we note you have submitted three police reports that are not responsive to the instant request because they do not involve the specified address, the requestor, or the other named individual. This decision does not address the public availability of the non-responsive reports, and that information need not be released in response to the request.

Next, we note some of the requested records may be subject to common-law privacy. 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 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 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 the named individual who is not the requestor. We find such a request for unspecified law enforcement records implicates this named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting this named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 in conjunction with common-law privacy.

However, we note the named individual at issue is the requestor's spouse. Thus, the requestor may be acting as the authorized representative of this individual. 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 the individual at issue, the requestor has a special right of access to the compilation of such individual's criminal history, to the extent it exists. We note you have submitted records that do not list the other named individual as a suspect, arrestee, or criminal defendant. Accordingly, we will address your remaining arguments against disclosure of the submitted 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, the relevant language of which 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.

...

(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:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2). 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). Section 58.007(c) does not apply where the information in question involves a juvenile victim, complainant, or witness and not a juvenile suspect or offender. *See id.* § 51.04(a) (Family Code title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child). You raise section 58.007 for the submitted information. Upon review, we find one of the submitted reports does not involve juvenile delinquent conduct or conduct indicating a need for supervision. Accordingly, this report may not be withheld on the basis of section 58.007. *See Open Records Decision No. 478 at 2 (1987)* (language of confidentiality statute controls scope of protection). However, we agree the submitted reports we have marked constitute law enforcement records relating to juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Therefore, the information we have marked is within the scope of section 58.007(c). However, as you acknowledge, the requestor in this instance is the step-parent of the juveniles who are the subject of these reports. Thus, if the requestor is not the parent or legal guardian of the juveniles listed in the reports, then the information we have marked must be withheld in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code. However, to the extent the requestor is the parent or legal guardian of the juveniles listed in the reports, he may inspect or copy any law enforcement records concerning the children under section 58.007(e). *Id.* § 58.007(e). Nevertheless, section 58.007(j)(2) 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). Because you assert the information at issue is subject to section 552.108, we will consider the applicability of this exception to the information at issue.

You claim the report not subject to section 58.007(c) is excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 of the Family Code 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). Upon review, we find the information we have marked was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); see also Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Therefore, we find this marked information is generally confidential under section 261.201 of the Family Code. However, the requestor is the step-parent of the child victim in this report, and he is not alleged to have committed the suspected abuse. If the requestor is not the child victim’s parent, managing conservator, or legal representative, then this report must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. On the other hand, if the requestor is the child’s parent, managing conservator, or legal representative, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). In that instance, section 261.201(l)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). You assert the information we have marked under section 261.201 is excepted from public disclosure under section 552.108 of the Government Code. Therefore, in accordance with section 261.201(l)(2) of the Family Code, we will consider your remaining argument under section 552.108 for the information at issue.

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 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 information at issue pertains to an ongoing criminal investigation. Further, you state release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, based on your representations and our review, we agree section 552.108(a)(1) is generally applicable to the information at issue. *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., per curiam*, 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* and includes the identity of the complainant. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is not the authorized representative of the other individual named in the request, then the department must withhold any records that list the other named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not the parent or guardian of the children at issue in the reports we have marked under section 58.007 of the Family Code, then the department must withhold those reports in their entirety under section 552.101 in conjunction with section 58.007(c). If the requestor is not the parent, managing conservator, or legal representative of the child at issue in the report we have marked under section 261.201 of the Family Code, then the department must withhold that report in its entirety under section 552.101 in conjunction with 261.201. In the event the requestor is the parent or guardian of the children in the reports marked under section 58.007, or is the parent, managing conservator, or legal representative of the child in the report marked under section 261.201, then with the exception of basic information, the department may withhold those reports under section 552.108(a)(1) 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 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 389690

Enc. Submitted documents

c: Requestor
(w/o enclosures)