



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 11, 2010

Ms. Jessica Sangsvang  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2010-12184

Dear Ms. Sangsvang:

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# 390056 (Fort Worth Request No. W001235).

The City of Fort Worth (the "city") received a request for all police records regarding the requestor or thirteen named individuals. 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.

Initially, we note that one document you submitted as responsive is not a police record and was created by the city after the date the city received the request for information. This document, which we have marked, is not responsive to the request for information. The city need not release this non-responsive document in response to this request, and this ruling will not address that 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 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 city to compile unspecified law enforcement records concerning the thirteen named individuals. We find this request for unspecified law enforcement records implicates the privacy rights of these individuals. Therefore, to the extent the city maintains law enforcement records depicting a named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy. However, you have submitted reports which do not list any of these individuals as a suspect, arrestee, or criminal defendant. These reports do not implicate the privacy interests of the named individuals and the city may not withhold them in their entirety under section 552.101 of the Government Code based on common-law privacy.

The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. See 540 S.W.2d at 683. This office has found that some 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). This office has additionally determined that common-law privacy generally protects the identities of juvenile offenders. See Open Records Decision No. 384 (1983); cf. Fam. Code § 58.007(c). Upon review, we have marked the portions of the submitted information that reveal highly intimate and embarrassing personal details that are of no legitimate public interest. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you do not explain how any of the remaining responsive information is highly intimate and embarrassing and of no legitimate public concern such that it is confidential pursuant to common-law privacy. Thus, none of the remaining information may be withheld on that basis.

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 reads:

(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). For purposes of section 58.007, “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). You claim portions of the submitted information are confidential under section 58.007(c). However, upon review, all the remaining information at issue either does not identify an individual aged seventeen or younger, or does not involve such an individual engaging in delinquent conduct or conduct indicating a need for supervision as those terms are defined for purposes of section 58.007. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). You do not provide any explanation as to how section 58.007 applies to any of this remaining information. Therefore, we conclude none of the remaining information is confidential under section 58.007, and no information may be withheld on that basis.

The remaining responsive information contains Texas motor vehicle record information that is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency. Gov’t Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Finally, the remaining information contains personal e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses we marked in the remaining information are not specifically excluded by section 552.137(c). As such, these e-mail addresses must be withheld under section 552.137, unless the owner of the addresses has affirmatively consented to their release. *See id.* § 552.137(b).

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<sup>1</sup>The 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).

In summary, to the extent the city maintains law enforcement records depicting any of the thirteen named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the Texas motor vehicle record information we marked under section 552.130 of the Government Code, and, unless the owner of the e-mail addresses consents to their disclosure, the e-mail addresses we marked under section 552.137 of the Government Code.<sup>2</sup> The remaining responsive information must be released.<sup>3</sup>

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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code and private e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>The remaining information contains social security numbers. We note 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 under the Act. Gov't Code § 552.147(b).

Ref: ID# 390056

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)