



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2010

Chief Don Hatcher
Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2010-13388

Dear Chief Hatcher:

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# 392348.

The Leander Police Department (the "department") received a request for all records pertaining to the requestor. You state the department has provided some of the requested information to the requestor.¹ You claim the submitted call for service records and incident reports 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 considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹You state the department redacted certain information from the information provided to the requestor. You provide documentation showing the redacted information consists of a social security number and a Texas driver's license number and expiration date. 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. Furthermore, this office 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 under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Open Records Decision No. 684, however, does not authorize the withholding of Texas driver's license expiration dates under section 552.130. Additionally, you state, and provide documentation showing, you advised the requestor of the redactions pursuant to section 552.1175(h) of the Government Code. We note, however, section 552.1175(h) pertains only to notifying a requestor of redacting certain information pursuant to sections 552.1175(b) and 552.1175(f) of the Government Code, not to redacting information under other exceptions in the Act.

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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. *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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You claim the submitted information is protected by common-law privacy because it constitutes a compilation of criminal history. In this instance, however, none of the submitted information lists the requestor as a suspect, arrestee, or criminal defendant. Therefore, we find none of the submitted information constitutes the requestor's compiled criminal history. Consequently, we conclude none of the submitted information may be withheld on the basis of common-law privacy.

Section 552.101 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 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.

...

(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, "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). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party, and not as a suspect or offender. You claim the submitted information is confidential under section 58.007. Incident report number 307709 and its related call for service record involve a fifteen-year-old individual arrested for unauthorized use of a motor vehicle and reckless driving. Thus, we find this information involves juvenile delinquent conduct and is subject to section 58.007(c). *See id.* § 51.03(a) (defining juvenile "delinquent conduct" for the purposes of section 58.007). The remaining information, however, does not involve a juvenile as a suspect or offender. Therefore, we conclude none of the remaining information is confidential under section 58.007(c) of the Family Code.

We note the requestor is a parent of the juvenile arrestee listed in the information pertaining to case number 307709. As such, the department may not use section 58.007(c) to withhold this information from this requestor. *Id.* § 58.007(e); Section 58.007(j)(2), however, states the department must withhold any information that is excepted from disclosure under other law. *Id.* § 58.007(j)(2). We note some of the information in incident report number 307709 and its related call for service record may be protected under section 552.130 of the Government Code.² Furthermore, you assert some of the remaining information, including

²The 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).

the information pertaining to case number 307709, is excepted under section 552.108 of the Government Code.

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 information at issue 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 some of the remaining information, including information pertaining to case number 307709, relates to a pending criminal investigation. The remaining information pertains to four separate incidents. You have not explained the information pertaining to each incident relates to individual pending investigations, nor have you explained the information for each incident relates to one combined pending investigation. Furthermore, you have not marked, or otherwise indicated, what information is excepted under section 552.108. *See* Gov’t Code § 552.301(e)(2) (governmental body must label copy of information at issue to indicate which exceptions apply to which parts of the information). Therefore, we determine the department has failed to demonstrate the applicability of section 552.108(a)(1) to any of the remaining information. Consequently, none of the remaining information, including information pertaining to case number 307709, may be withheld under section 552.108(a)(1) of the Government Code.

Section 58.007(j)(1), however, states that, before information is released to a parent under section 58.007(e), a custodian of records must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent’s child. *Id.* § 58.007(j)(1). Incident report number 307709 includes identifying information of a juvenile witness. Although the requestor is a parent of the arrestee listed in this report, the requestor is not a parent of the juvenile witness listed in this report. Thus, the department must withhold the identifying information, which we have marked, of the juvenile witness listed in incident report number 307709 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part:

(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 . . . 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:

...

(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). Incident report number 300564 and its related call for service record reflect they were used or developed in an investigation by the department of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *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 the information related to case number 300564 is generally confidential under section 261.201 of the Family Code.

The requestor, however, is a parent of the child victim listed in the case number 300564 information, and is not suspected of having committed the alleged abuse. Thus, in this instance, the department may not use section 261.201(a) to withhold the information related to case number 300564 from this requestor. Fam. Code § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the department must withhold the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Furthermore, section 261.201(l)(2) states any

information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). We note some of the remaining information in incident report number 300564 and its related call for service record may be protected under section 552.130 of the Government Code. Accordingly, we will consider the applicability of section 552.130 to the remaining information pertaining to case number 300564.

Call for service record number 93235 and the remaining information in incident report numbers 307709 and 300564 and their related call for service records include Texas motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, permit, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We have marked Texas license plate numbers, driver's license numbers, and driver's license expiration dates in the remaining information. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

In summary, the department must withhold the juvenile-identifying information we have marked in incident report number 307709 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold the reporting party's identifying information we have marked in the incident report and call for service record pertaining to case number 300564 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 Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁴

³We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the information to be released contains the requestor's and her child's Texas driver's license numbers and expiration dates, which are generally confidential under section 552.130 of the Government Code. Because this exception was enacted to protect a person's privacy, the requestor has a right of access to her and her child's private information under section 552.023(a) of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Furthermore, the information to be released includes social security numbers that do not belong to the requestor or her child. 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. If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 392348

Enc. Submitted documents

c: Requestor
(w/o enclosures)