



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2010

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-13922

Dear Mr. Griffith:

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# 393460 (ORR #10-2598).

The McKinney Police Department (the "department"), which you represent, received a request for reports involving a named individual at a specified address and domestic violence. You claim that the requested 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 information you submitted.

We first note that some of the submitted information did not exist when the department received the instant request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.<sup>1</sup> We also note that some of the submitted information does not pertain to domestic violence. We find that the submitted information that either did not exist when the department received the instant request or does not pertain to domestic violence is not responsive to the request. This decision does not address the public availability of the submitted information that is not responsive to the request, and the department need not release that information in response to the request. We have marked 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. This exception encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication

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<sup>1</sup>See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. *United States 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). We also find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks access to unspecified records of domestic violence that involve the named individual. We find that this request requires the department to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Information that does not depict the named individual as a suspect, arrested person, or criminal defendant does not implicate his privacy interests and may not be withheld as a compilation of his criminal history under section 552.101 and common-law privacy.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential. Section 58.007 of the Family Code provides in part:

(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 [the Act] or other law.

Fam. Code § 58.007(c), (e), (j); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of Fam. Code tit. 3). 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.

We find that some of the submitted information involves a juvenile suspect or offender. That information, which we have marked, is therefore generally confidential under section 58.007(c). In this instance, the requestor appears to be a grandparent of the juvenile involved. In the event she also is the juvenile's guardian, the requestor would have a right to inspect law enforcement records concerning the juvenile under section 58.007(e). *See id.* § 58.007(e). As we are unable to determine whether the requestor is the juvenile's guardian, we will rule conditionally. Thus, we conclude that if the requestor is not the juvenile suspect's guardian, then the information we have marked under section 58.007 must be withheld under section 552.101 of the Government Code. But if she is the juvenile's guardian, then the requestor has a right to inspect the marked information under section 58.007(e) of the Family Code. In that event, the marked information may not be withheld from this requestor under section 552.101 on the basis of section 58.007. Section 58.007(j) provides, however, that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, in the event the requestor has a right to inspect the information we have marked under section 58.007, we will address the department's claim for that information under section 552.108 of the Government Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in 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, 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.

*Id.* § 261.201(a), (k)-(l). We also find that some of the submitted information was used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We therefore conclude that the information in question, which we have marked, is generally confidential under section 261.201(a)(2). In this instance, however, the requestor appears to be a grandparent of the children who are the subject of the marked information, and the requestor is not alleged to have committed child abuse or neglect. Thus, the marked information may not be withheld from this requestor on the basis of section 261.201(a) if she is the children’s managing conservator or other legal representative. *See id.* § 261.201(k). As we are unable to determine whether the requestor is the children’s managing conservator or other legal representative, we will rule conditionally. Thus, we conclude that if the requestor is not the children’s managing conservator or other legal representative, then the information we have marked under section 261.201 must be withheld under section 552.101 of the Government Code. But if the requestor is the children’s managing conservator or other legal representative, then the marked information may not be withheld from this requestor under section 552.101 on the basis of section 261.201. Section 261.201(l) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Section 261.201(l) also provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 261.201(l)(2). Therefore, in the event the requestor is the children’s managing conservator or other legal representative, the information we have marked under section 261.201(l)(3) must be withheld. Additionally, we will address the department’s claim under section 552.108 of the Government Code for the remaining marked information.

Section 552.108 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information is related to closed cases that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to the information we have marked, including the remaining information marked under sections 58.007 and 261.201 of the Family Code.<sup>2</sup>

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<sup>2</sup>As we are able to make this determination, we need not address your claim under section 552.108(b)(2) of the Government Code.

We note that 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 Publishing 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 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*). We note that the information we have marked under section 552.108 includes call-for-service reports. In Open Records Decision No. 649 (1996), this office concluded that information contained in a computer-assisted dispatch ("CAD") report is substantially the same as basic information. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Therefore, except for the basic information, including detailed descriptions of the offenses, that must be released under section 552.108(c), the department may withhold the information we have marked under section 552.108(a)(2).

Lastly, we note that some of the basic information is protected by common-law privacy under section 552.101 of the Government Code. Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* 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). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information in the call for service reports that is highly intimate or embarrassing and not a matter of legitimate public interest. In releasing basic information under section 552.108(c), the department must generally withhold the marked information under section 552.101 in conjunction with common-law privacy. In this instance, however, the requestor may be an authorized representative of one of the individuals to whom the private information pertains. As such, the requestor would have a right of access under section 552.023 of the Government Code to information that implicates that individual's privacy interests. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>3</sup> Thus, if the requestor is that individual's authorized representative, information relating to the individual may not be withheld from this requestor under section 552.101 in conjunction with common-law privacy. We have marked that information.

In summary: (1) any information maintained by the department that depicts the named individual as a suspect, arrested person, or criminal defendant must be withheld from the

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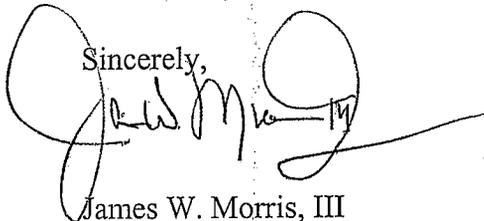
<sup>3</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

requestor under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 58.007 of the Family Code must be withheld under section 552.101 of the Government Code, unless the requestor is the juvenile's guardian; (3) the information we have marked under section 261.201 of the Family Code must be withheld under section 552.101, unless the requestor is the children's managing conservator or other legal representative; (4) if the requestor is the children's managing conservator or other legal representative, the information we have marked under section 261.201(1)(3) of the Family Code must be withheld under section 552.101; (5) except for basic information under section 552.108(c), the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code, including the remaining information we have marked under sections 58.007 and 261.201 of the Family Code; and (6) in releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy, unless the requestor has a right of access to the information we have marked under section 552.023 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](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 W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 393460

Enc: Submitted documents

c: Requestor  
(w/o enclosures)