



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2010

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2010-15436

Dear Mr. Scott:

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# 396421 (City ID Nos. 251 and 304).

The Wichita Falls Police Department (the "department") received two requests from the same requestor for information pertaining to incident report number 10-030566, and all incident reports during a specified time period regarding the requestor's client, a specified address, and/or four named individuals. You state the department has provided some of the requested information to the requestor. You claim the remaining 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 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 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. The present request requires the department, in part, to compile unspecified law enforcement records concerning the four individuals named in the request, thus implicating the named individuals' rights to privacy. Although incident report number 10-030566 lists one of the named individuals as a suspect, this report was specifically requested in the request. Thus, we find report number 10-030566 is not part of that individual's compiled criminal history. Therefore, to the extent the department maintains other law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹ We note you have submitted several reports that pertain to one or more of the four named individuals, but do not list the named individuals as suspects, arrestees, or criminal defendants. Thus, we will consider your claims under sections 552.101 and 552.108 for these reports, as well as incident report number 10-030566.

Section 552.101 also encompasses information protected by other statutes, such as 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.

¹As our ruling for this information is dispositive, we need not address your arguments against disclosure for this information.

See id. § 51.02(2). Incident report number 09-061097 involves a sixteen-year-old individual suspected of criminal mischief, and incident report number 08-031805 involves a sixteen-year-old individual suspected of aggravated assault. Thus, we find these reports involve juvenile delinquent conduct. *See id.* § 51.03(a) (defining juvenile “delinquent conduct” for the purposes of section 58.007). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find incident report numbers 09-061097 and 08-031805 are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.²

Section 552.101 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:

²As our ruling for this information is dispositive, we need not address your argument against disclosure for this information.

...

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

Id. § 261.201(a), (k), (l). You claim incident report numbers 09-062311 and 10-030566 are confidential under section 261.201. Report number 09-062311 pertains to several individuals involved in a physical altercation. You have not provided any explanation of, nor does the report reflect, how report number 09-062311 was used or developed in an investigation of suspected child abuse or neglect. Thus, you have failed to demonstrate report number 09-062311 is confidential under section 261.201 of the Family Code. Consequently, report number 09-062311 may not be withheld under section 552.101 of the Government Code.

Report number 10-030566 reflects it was 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). Based on our review, we find report number 10-030566 is within the scope of section 261.201 of the Family Code. The requestor, however, is the legal representative of a parent of the child victim listed in the report, and the parent is not suspected of having committed the alleged abuse. In this instance, the department may not use section 261.201(a) to withhold this information from this requestor.³ *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). You assert report number 10-030566 and the remaining submitted reports are excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we will consider this argument against disclosure.

We note incident report number 09-062029 contains warnings signed by a magistrate. These warnings are subject to section 552.022(a)(17) of the Government Code and must be released unless they are expressly confidential under other law. *See* Gov’t Code § 552.022(a)(17). You claim the warnings are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body’s interests and is, therefore, not “other law” for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the warnings, which we have marked, under section 552.108 of the Government Code. As you have claimed no other exceptions to disclosure for these documents, they must be released.

³Because the requestor has a right of access to information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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).

We note incident report number 09-062029 includes a statutory warning, a copy of which has been provided to the arrestee. Because you have not explained how further release of the statutory warning will interfere with the detection, investigation, or prosecution of crime, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the statutory warning. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Consequently, the department may not withhold the statutory warning under section 552.108(a)(1) of the Government Code.

You state incident report numbers 10-030566, 09-100266, 09-062311, and 09-062029 pertain to pending criminal investigations. Based on your representations and our review, we determine release of these reports would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold report numbers 10-030566, 09-100266, 09-062311, and 09-062029 under section 552.108(a)(1) of the Government Code. We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov’t Code § 552.007.

We note the statutory warning contains the arrestee’s Texas driver’s license number. Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit issued by a Texas agency is excepted from public release.⁴ *Id.* § 552.130(a)(1). Therefore, the department must withhold the driver’s license

⁴The 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).

number we have marked in the statutory warning under section 552.130 of the Government Code.⁵ The remaining information in the statutory warning must be released.

In summary, with the exception of report number 10-030566, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report numbers 09-061097 and 08-031805 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must release to the requestor the marked magistrate's warnings in report number 09-062029 pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information and the marked statutory warning, all of which must be released, the department may withhold report numbers 10-030566, 09-100266, 09-062311, and 09-062029 under section 552.108(a)(1) of the Government Code. In releasing the statutory warning, the department must withhold the marked driver's license number under section 552.130 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

⁵We note 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.

Mr. Peter Scott - Page 7

Ref: ID# 396421

Enc. Submitted documents

c: Requestor
(w/o enclosures)