



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-15730

Dear Ms. De La Garza:

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# 397023 (PIR# 17513).

The Houston Police Department (the "department") received a request on July 1, 2010 for all information pertaining to a named individual and a request on September 22, 2010 for information pertaining to a specified incident. You claim that 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 representative sample of information.¹

Initially we note, and you acknowledge, that the department did not comply with its ten- or fifteen-business-day deadlines under section 552.301 of the Government Code in requesting a decision in response to the July 1 request. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the department's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception for both the July 1 and September 22 requests. Additionally, we note some of the submitted information may be subject to section 552.130 and section 552.136 of the Government Code, which can provide a compelling reasons for non-disclosure; thus, we will also address the applicability of those exceptions.²

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 information that other statutes make confidential, 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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. See Fam. Code § 51.02(2). Section 58.007 provides in pertinent part 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.

...

²The 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).

(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.

Id. § 58.007(c), (e), (j). You state, and we agree, the submitted information involves juvenile delinquent conduct occurring after September 1, 1997; thus, the submitted information is subject to section 58.007. *See id.* § 51.03 (defining "delinquent conduct"). Accordingly, as none of the exceptions in section 58.007 apply to the September 22 requestor, the department must withhold the submitted records from her pursuant to section 552.101 of the Government Code in conjunction with section 58.007. We note, however, the July 1 requestor is the legal representative of one of the juvenile offenders listed in the submitted information. Thus, the department may not withhold the submitted records from the July 1 requestor on the basis of section 58.007. *See Fam. Code* § 58.007(e). However, section 58.007(j)(1) provides the department must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child at issue. *See id.* § 58.007(j)(1). Therefore, the department must withhold juvenile-identifying information, a sampling of which we have marked, from the July 1 requestor. Further, section 58.007(j)(2) of the Family Code 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). We note portions of the remaining information are subject to sections 552.101, 552.130, and 552.136 of the Government Code. Accordingly, in regard to the July 1 requestor, we will address the applicability of these sections.

Section 552.101 also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28,

part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* § 411.090-.127. Furthermore, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find portions of the remaining submitted information, a sampling of which we have marked, consist of CHRI for the purposes of chapter 411. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also 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). The type of information considered highly 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. *Id.* at 683. This office has found that 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. However, we note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information). This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992).

We find portions of the remaining information, a sampling of which we have marked, consist of criminal history information and vehicle lien information. This information is highly intimate or embarrassing and not of legitimate public concern; accordingly, the department must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information that relates 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). We note section 552.130 protects the privacy interest of the individual, and because the right of privacy is purely personal, it lapses upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Some of the driver's license numbers in the remaining information pertain to a deceased individual; thus, these driver's license numbers are not confidential under section 552.130 and may not be withheld on that basis. However, we find the department must withhold the remaining vehicle identification numbers, license plate information, title and registration information, and driver's license information that pertain to living individuals, a sampling of which we have marked, under section 552.130 of the Government Code.

Finally, we note an insurance policy number in the remaining information is confidential under section 552.136 of the Government Code, which states, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. Thus, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.³

In summary, the department must withhold the submitted information from the September 22 requestor in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. In accordance with our representative markings, the department must withhold from the July 1 requestor the portions of the submitted information subject to section 552.101 in conjunction with section 58.007(j)(1) of the Family Code, section 552.101 in conjunction with section 411.083 of the Government Code, section 552.101 in conjunction with common-law privacy, section 552.130 of the

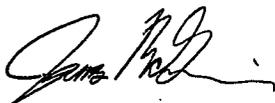
³We note in Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code, and section 552.136 of the Government Code. The remaining information must be released to the July 1 requestor.⁴

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# 397023

Enc. Submitted documents

c: Requestors
(w/o enclosures)

⁴We note the remaining information includes social security numbers, some of which pertain to the July 1 requestor's client. Section 552.147(b) of the Government Code authorizes a governmental body to redact living persons' social security numbers from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). However, we also note the July 1 requestor has a right of access to his client's social security number. *See id.* § 552.023(a).