



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2010

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2010-16581

Dear Mr. Ohnemiller:

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# 398707.

The Midland Police Department (the "department") received a request for all records involving a named individual, including information pertaining to two specified incidents. You claim the requested 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right to 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 demonstrated. *Id.* at 861-82. 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 that information that refers to an individual solely as a victim, witness, or involved person is not private because it is not criminal history information, and therefore, may not be withheld under section 552.101 on that basis.

The present request seeks, in part, all records related to the named individual. We find this portion of the request requires the department to compile unspecified law enforcement records concerning the named individual and, thus, implicates the named individual's right to privacy. Therefore, to the extent the department maintains unspecified law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information pertaining to the two incidents specified in the request. You also have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of the individual's criminal history, and the department may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information that other statutes makes confidential, such as section 58.007 of the Family Code, which 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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating

a need for supervision” for purposes of title 3 of the Family Code). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2). Upon review, we note case number 2000-08010007 involves juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply to this information. Therefore, the department must withhold case number 2000-08010007 under section 552.101 in conjunction with section 58.007 of the Family Code.

Next, we note portions of the submitted information are subject to sections 552.130 and 552.136 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130(a). Thus, the department must withhold the Texas driver’s license numbers we have marked pursuant to section 552.130 of the Government Code.

Section 552.136 states that “[n]otwithstanding any other provision of this chapter, 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.” *Id.* § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). The department must withhold the account numbers we have marked under section 552.136 of the Government Code.²

In summary, to the extent the department maintains unspecified law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, 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 case number 2000-08010007 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the information we have

¹The 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).

²We 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 a Texas driver’s license number under section 552.130 of the Government Code and bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

marked pursuant to sections 552.130 and 552.136 of the Government Code. The remaining information must be released to the requestor.³

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tp

Ref: ID# 398707

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains social security numbers. 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).