



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2010

Ms. T. Tricia Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-16837

Dear Ms. Dang:

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# 399196.

The Corpus Christi Police Department (the "department") received a request for all incident reports involving a named individual. You claim the submitted 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 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 doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to a named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.¹

We note you have submitted reports that do not list the named individual as a suspect, arrestee, or criminal defendant. These reports do not consist of a compilation of the named individual's criminal history and may not be withheld under section 552.101 of the Government Code on that basis. Therefore, we will consider your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by statute, such as former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591; *see also* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). We note section 51.14 is inapplicable in this instance because the juvenile conduct at issue occurred after January 1, 1996. However, section 58.007 of the Family Code may be applicable to this information. Section 58.007 of the Family Code 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;

¹As our ruling is dispositive with respect to the information at issue, we need not address your remaining arguments against its disclosure.

(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(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review of the information at issue, we find report numbers 05-0033997 and 04-013193, which we have marked, pertain to juvenile suspects and involve allegations of juvenile delinquent conduct or juvenile conduct indicating a need of supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Thus, the department must withhold report numbers 05-0033997 and 04-013193 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.² We note section 58.007(c) may also apply to report numbers 02-026506, 02-026500, 00-070500, and 00-030416, which we have marked. However, these marked reports do not reflect the age of the suspect. Because we are unable to determine the ages of the suspects involved in report numbers 02-026506, 02-026500, 00-070500, and 00-030416, we must rule conditionally. To the extent report numbers 02-026506, 02-026500, 00-070500, and 00-030416 constitute records of juvenile suspects or offenders who are ten years of age or older and under seventeen years of age, section 58.007(c) of the Family Code is applicable to report numbers 02-026506, 02-026500, 00-070500, and 00-030416, and the department must withhold these reports under section 552.101 of the Government Code.³ However, to the extent these reports pertain to suspects or offenders who are not ten years of age or older and under seventeen years of age, section 58.007(c) is not applicable to them, and these reports may not be withheld under section 552.101 of the Government Code on that basis. In that instance, we will address your remaining arguments against disclosure of report numbers 02-026506, 02-026500, 00-070500, and 00-030416.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides as follows:

²As our ruling is dispositive with respect to the information at issue, we need not address your remaining arguments against its disclosure.

³As our ruling is dispositive with respect to the information at issue, we need not address your remaining arguments against its disclosure.

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Fam. Code § 261.201(a). Upon review, we find report number 96-085960, which we have marked, relates to an investigation of alleged or suspected child abuse conducted by the department. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *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). Accordingly, we find the marked information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude report number 96-085960 is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it under section 552.101 of the Government Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). 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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* 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* Gov’t Code § 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. *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

⁴As our ruling is dispositive with respect to the information at issue, we need not address your remaining arguments against its disclosure.

by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. You argue portions of the remaining information consist of CHRI that is confidential under section 411.083. However, we find you have failed to demonstrate how any portion of the submitted information consists of CHRI for purposes of section 411.083, and no portion of the submitted information may be withheld under section 552.101 of the Government Code on that basis.

Next, you claim section 552.108 of the Government Code for portions of the remaining information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.301(e)(1)(A). You state portions of the remaining information, which you have marked, pertain to closed criminal cases that did not result in convictions or deferred adjudications. We note case number 02-020568 reflects it resulted in a plea of guilty on the part of the arrestee. Therefore, we find you have failed to demonstrate how case number 02-020568 concluded in a final result other than conviction and deferred adjudication, and it may not be withheld under section 552.108(a)(2). However, we find you have demonstrated section 552.108(a)(2) of the Government Code is applicable to the remaining information you have marked.

We note 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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense and the alleged crime, but does not include Texas motor vehicle record information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information and report number 02-020568, the department may withhold the remaining information you have marked under section 552.108(a)(2).

We note portions of the basic information in report number 00-051792 are excepted from disclosure under common-law privacy. As noted above, common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. Common-law privacy also encompasses the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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. Additionally, this office has found some kinds of medical information

or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find portions of the basic information in report number 00-051792, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.⁵ Gov't Code § 552.130(a)(1), (2). Upon review, we find a portion of the remaining information consists of Texas motor vehicle record information. Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.⁶

In summary, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. Thus, the department must withhold report numbers 05-0033997 and 04-013193 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent report numbers 02-026506, 02-026500, 00-070500, and 00-030416 constitute records of juvenile suspects or offenders who are ten years of age or older and under seventeen years of age, the department must withhold these reports under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent report numbers 02-026506, 02-026500, 00-070500, and 00-030416 pertain to suspects or offenders who are not ten years of age or older and under seventeen years of age, the department may not withhold these reports under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold report number 96-085960 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of case number 02-020568, which we have marked for release, and the basic information, the department may withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code; however, in releasing the basic information,

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁶We note this office recently 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 and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

the department must withhold the information we have marked in report number 00-051792 under section 552.101 in conjunction with common-law privacy. The department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code. The remaining information must be released.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 399196

Enc. Submitted documents

c: Requestor
(w/o enclosures)