



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2010

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
For the McKinney Police Department
740 East Campbell Road
Richardson, Texas 75081

OR2010-17640

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# 400766 (ORR# 10-2803).

The McKinney Police Department (the "department") received a request for all records pertaining to six named individuals. 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.

Initially, we note one of the submitted reports, case 10-69114, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-17468 (2010). In that ruling, we found that, with the exception of basic information the department may withhold case 10-69114 under section 552.108(a)(2). In addition, we found that in releasing basic information, the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, we conclude the department must continue to rely on that ruling as a previous determination and withhold or release the submitted information in accordance with Open Records Letter No. 2010-17468. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

The present request requires the department to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals' rights to privacy. Therefore, 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. We note you have submitted reports that do not list any of the named individuals as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 in conjunction with common-law privacy on that basis. Therefore, we will address your remaining arguments against the disclosure of this information.

Section 552.101 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). You assert case 10-068945 is confidential under section 58.007(c). Section 58.007(c) is applicable to records of 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). Case 10-068945 relates to an offender who is five years old. Thus, we find section 58.007 is inapplicable to case 10-068945. As you raise no further exceptions to the disclosure of case 10-068945, the department must release it.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(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.

Id. § 261.201(a). Upon review, we find some of the remaining information, which we have marked, consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this information is within the scope of section 261.201(a). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we find this information is confidential pursuant to section 261.201 of the

Family Code, and the department must withhold the marked information under section 552.101 of the Government Code.¹

You seek to withhold the remaining information under section 552.108(a)(2), which 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). You state the remaining reports relate to cases that have been closed and in which no further actions will be taken. Based on your representation and our review of the information at issue, we conclude section 552.108(a)(2) of the Government Code is applicable to the remaining reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining reports under section 552.108(a)(2) of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2010-17468 and withhold or release case 10-69114 in accordance with that ruling. 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 release case 10-068945. The department must withhold the information we have marked under section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the remaining reports under section 552.108(a)(2) of the Government Code.²

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

²The requestor, in this instance, states she was appointed by the Collin County District Courts to perform a social study of the family of the individuals named in the request. We note that a domestic relations office created under chapter 203 of the Family Code is entitled to obtain from the Department of Public Safety criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203. *See* Gov’t Code § 411.1285(a); Fam. Code § 201.001(2) (defining “domestic relations office”). As the information subject to section 261.201(a) of the Family Code and section 552.108(a)(2) of the Government Code does not contain any criminal history record information that relates to any person who is the subject of the social study, we need not determine the applicability of section 411.1285 to this request.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 400766

Enc. Submitted documents

c: Requestor
(w/o enclosures)