



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

Mr. Gregory Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-19256

Dear Mr. Alicie:

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# 403713.

The Baytown Police Department (the "department") received a request for all reports or other documents relating to a named individual during a specified period. You state that some of the requested information has been released. Additionally, you state you will redact certain social security numbers under section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's responsibilities under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this

¹ Section 552.147 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. *See* Gov't Code § 552.147(b).

office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The department received the request for information on September 17, 2010. You state, and provide documentation showing, that you provided the requestor with a cost estimate that is in compliance with section 552.2615 of the Government Code. *See id.* § 552.2615 (providing that governmental body shall provide requestor with estimate of charges if charges exceed \$40). The requestor complied with section 552.2615 by accepting the charges. *See id.* § 552.2615(b). Section 552.2615 of the Government Code provides that the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) (providing that "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"); *see also* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications to clarify or narrow request for information will toll section 552.301(b) deadlines). Accordingly, the ten business day deadline began on September 17, 2010. Thus, the department was required to request a decision from this office by October 1, 2010, and to submit the information required by section 552.301(e) by October 8, 2010. Consequently, because the department submitted the request for a decision and the information at issue on October 15, 2010, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Your claims under sections 552.101, 552.130, and 552.137 of the Government Code can provide compelling reasons for non-disclosure; therefore we will consider the applicability of these exceptions.

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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We agree the present request requires the department to compile unspecified criminal history records concerning the individual named in the request and implicates that individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information in its entirety under section 552.101 in conjunction with common-law privacy.

You have submitted information that does not involve the named individual as a suspect, arrestee or criminal defendant. This information does not implicate the privacy interests of the named individual. Thus, we will address your arguments against disclosure of this information.

In addition to compilations of criminal history records, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); information concerning the intimate relations between individuals and their family members, *see* ORD 470; and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we find the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center (the "TCIC") is confidential under federal and state law. 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 at 7 (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(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See Gov't Code* § 411.089(b)(1). Upon review, we find the Federal Bureau of Investigation ("FBI") number we have marked constitutes CHRI generated by the FBI which must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses former section 51.14 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. Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by the former section 51.14(d), which was continued in effect for that purpose. *See Act of May 27, 1995, 74th Lég., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591.* Section 51.14 also applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See Fam. Code* § 51.02(2). Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). In this instance, report 1995-44399 concerns juvenile delinquent conduct that occurred prior to January 1, 1996. *See id.* § 51.03 (defining "delinquent conduct"). Thus, the report is confidential under former section 51.14(d) of the Family Code and must be withheld under section 552.101 of the Government Code.

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

(a) Except as provided by Section 261.203, the 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.
- (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). You contend offense report 2001-38730 is confidential under section 261.201 of the Family Code because the report documents a referral made to Child Protective Services (“CPS”). However, although a referral was made to CPS, you have not demonstrated how this report was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Therefore, we determine offense report 2001-38730 is not confidential under section 261.201 of the Family Code, and it may not be withheld under section 552.101 on that basis. Report 2009-11767 consists of information used or developed in an investigation of alleged child abuse. *See id.* You have not indicated that the department has adopted a rule that governs the release of this information. Therefore, we assume no such regulation exists. Given that assumption, report 2009-11767 is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.130 of the Government Code exempts 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. Upon review, we find the information you have marked, in addition to the information we have marked, is confidential and must be withheld under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides “[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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the department must withhold the insurance policy number we have marked pursuant to section 552.136.

Section 552.137 provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by

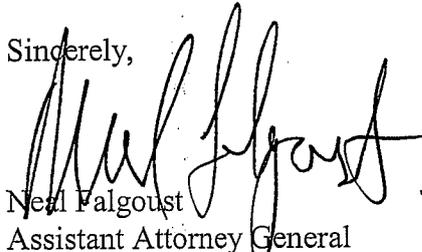
subsection (c). Gov't Code § 552.137(a)-(c). Upon review, the remaining information does not contain any e-mail addresses of a member of the public. Accordingly, none of the submitted information may be withheld on that basis.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department also must withhold: (1) the information we have marked under section 552.101 in conjunction with common-law privacy; (2) the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code; (3) report 1995-44399 under section 552.101 in conjunction with former section 51.14 of the Family Code; (4) report 2009-11767 in conjunction with section 261.201 of the Family Code; (5) the marked motor vehicle record information under section 552.130 of the Government Code; and (6) the insurance policy number we have marked under section 552.136 of the Government Code.² 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/vb

² We note this office has issued Open Records Decision No. 684 (2009), which serves as 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 and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general opinion.

Ref: ID# 403713

Enc. Submitted documents

c: Requestor
(w/o enclosures)