



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

Mr. Joe Torres III
City Attorney
City of Alice
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2010-19297

Dear Mr. Torres:

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# 403886.

The Alice Police Department (the "department"), which you represent, received a request for eleven categories of information regarding specified law enforcement records, statistics, and department policies, including the name, race, sex, date of birth, country of origin, booking date and number, report number, location of offense and arrest, authority of charge, literal charge, level of charge, disposition type, person to whom released, and the release date of all persons arrested from January 1, 2009 to the date of the request. You state the department does not have information responsive to many of the categories of the requested information.¹ 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.²

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note most of the information you have submitted pertains to the request for specified information regarding arrestees. However, some of this information, which we have marked, is not responsive to that part of the request because it was created before January 1, 2009 or after the request was received. We note also that portion of the request seeks only the name, race, sex, date of birth, country of origin, booking date and number, report number, location of offense and arrest, authority of charge, literal charge, level of charge, disposition type, person to whom released, and the release date of all persons arrested since January 1, 2009. Thus, any information submitted in response to that portion of the request other than those specified items is not responsive. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release that information in response to the request.³

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information that another statute makes confidential. Gov’t Code § 552.101. Section 552.101 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *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. 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 that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Here, you claim that the requestor is asking the department to compile unspecified law enforcement records. We note, however, that the present request is for specified pieces of information concerning all people arrested during a specified period of time. The requestor does not seek a compilation of information for any specific individual. Therefore, the department may not withhold any of the responsive information under section 552.101 of the Government Code as a compilation of an individual’s criminal history.

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

- (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

³As our ruling is dispositive, we need not address your claim under section 552.101 of the Government Code in conjunction with common-law privacy for the non-responsive information.

purposes consistent with [the Family 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 some of the information at issue was used or developed in investigations under section 261.201(a). *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, none of the remaining information at issue is confidential under section 261.201 of the Family Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 58.007(c) of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 58.007(c). The relevant language of section 58.007 reads 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.

Id. § 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 at the time of the commission of the crime. *See id.* § 51.02(2). You assert some of the remaining information involves juveniles engaged in delinquent conduct or conduct in need of supervision. *See id.* § 51.03 (defining

“delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Upon review, we find some of the arrestees in the remaining information have codes indicating they are juveniles engaging in conduct that occurred after September 1, 1997. However, the code does not indicate the ages of the offenders involved. Because we are unable to determine the ages of the offenders involved in these records, we must rule conditionally. To the extent the information we have marked constitutes records of juvenile offenders engaged in delinquent conduct or conduct indicating a need for supervision who are ten years of age or older and under seventeen years of age at the time of the commission of the crimes, it is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, to the extent this information pertains to offenders who are not ten years of age or older and under seventeen years of age at the time of the commission of the crimes, the department may not withhold it under section 552.101 on the basis of section 58.007. We further note none of the remaining information at issue identifies juveniles engaged in delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. Thus, we find you have failed to demonstrate how any of the remaining information at issue is subject to section 58.007 of the Family Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Next, we understand you claim the names of the arrestees whose cases did not result in conviction or deferred adjudication are excepted under section 552.108(a)(2) of the Government Code.⁴ Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. However, we note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes the name, alias, race, sex, age, and address of the arrestee. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). In this instance, the information you seek to withhold consists of the arrestees’ names. Because this information is basic information, it may not be withheld under section 552.108 of the Government Code.

In summary, the department must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and (2) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, to the extent this information constitutes records of juvenile offenders engaged in delinquent conduct or

⁴Although you raise section 552.108(a)(1) of the Government Code, you make no arguments to support this exception. Accordingly, we find that the department has waived its claim under this exception. See Gov’t Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

conduct indicating a need for supervision who are ten years of age or older and under seventeen years of age at the time of the commission of the crimes. The remaining responsive 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 403886

Enc. Submitted documents

cc: Requestor
(w/o enclosures)