



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2010-19484

Dear Ms. Sangsvang:

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# 404616 (ORR# W004422).

The Fort Worth Police Department (the "department") received a request for any incident or offense reports or calls for service where a named individual was a witness, complainant, or suspect. You state the department has redacted certain Texas driver's license numbers and license plate numbers pursuant to the previous determination issued in Open Records Letter No. 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In addition, you state the department has redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You state you will release some of the requested information. You claim the submitted 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 doctrine of common-law privacy,

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

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 satisfied. *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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the request requires the department to compile unspecified records pertaining to a named individual. This request for a compilation of unspecified law enforcement records implicates the privacy rights of the named individual. 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 such records under section 552.101 in conjunction with common-law privacy.

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. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information 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 address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. The language of section 58.007(c) 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.

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). You assert, and we agree, report number 07-71462 involves juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, report number 07-71462 is confidential pursuant to section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.218 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 860,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). You state the City of Fort Worth is part of an emergency communication district that is subject to section 772.218 of the Health and Safety Code. Thus, we conclude to the extent the telephone number you have marked consists of the originating telephone number of a 9-1-1 caller that was supplied by a 9-1-1 service provider, the department must withhold the marked telephone number under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, to the extent the marked telephone number is not the originating telephone number provided by a 9-1-1 service supplier, the department may not withhold it under section 552.101 in conjunction with section 772.218.

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 such records under section 552.101 in conjunction with common-law privacy. The department must withhold report number 07-71462 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent the information you have marked consists of the originating telephone number of a 9-1-1 caller that was supplied by a 9-1-1 service provider, the department must withhold it under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety 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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a long, sweeping horizontal stroke extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 404616

Enc. Submitted documents

c: Requestor
(w/o enclosures)