



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2011

Mr. Mack Reinwand
Assistant Police Legal Advisor
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2011-00454

Dear Mr. Reinwand:

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# 405468 (Arlington Ref. # 2272-101910).

The Arlington Police Department (the "department") received a request for all reports pertaining to a named individual and a specified address. You state you have released some responsive information to the requestor. You claim that 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 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 that (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 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. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning the individual at issue. We find this request for unspecified law enforcement records implicates the named 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 under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does 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 arguments against disclosure of this information.

Section 552.101 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 information that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides in pertinent part 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). Upon review, we find report numbers 01-80318, 04-72075, 04-72080, 04-83588, 05-7158, 05-74868, 06-16410, 07-54804, 08-44194, 09-41915 involve juveniles

engaged in delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997 and are therefore subject to section 58.007. None of the exceptions in section 58.007 appear to apply; therefore, report numbers 01-80318, 04-72075, 04-72080, 04-83588, 05-7158, 05-74868, 06-16410, 07-54804, 08-44194, 09-41915 are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. However, we find you have failed to demonstrate how report number 10-15920 involves a juvenile engaged in delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997. Accordingly, the department may not withhold this report under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As you raise no further exceptions to disclosure, the department must release report number 10-15920.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part the following:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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 agree report numbers 05-2432, 10-59329, and 10-64175 were used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(A) (defining abuse for purposes of Fam. Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore conclude that report numbers 05-2432, 05-7158, 10-59329, and 10-64175 are confidential under section 261.201(a). Accordingly, report numbers 05-2432, 10-59329, and 10-64175 must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we find report number 10-65010, which only involves a seventeen-year-old suspect, was not used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. Accordingly, report number 10-65010 may not be withheld under section 552.101 of the Government

Code in conjunction with section 261.201 of the Family Code. We will, however, consider your arguments under section 552.108 for report number 10-65010.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 08-30715, 09-83613, 10-65010, 10-20982, 10-37142, and 10-64170 relate to ongoing criminal investigations. Based on your representations and our review, we find that section 552.108(a)(1) is applicable to report numbers 09-83613, 10-65010, 10-20982, 10-37142, and 10-64170. *See Houston Chronicle Publ’g 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). However, we note that report number 08-30715 pertains to a class C misdemeanor, which occurred on May 4, 2008. The statute of limitations for this type of offense is two years. *See Code Crim. Proc. art. 12.02* (complaint or information on class C misdemeanor may be presented within two years from date of commission of offense, and not afterward). More than two years have elapsed since the events giving rise to the investigation in report number 08-30715, and you have not informed this office any criminal charges were filed within the limitations period. Accordingly, the department may not withhold report number 08-30715 under section 552.108(a)(1) of the Government Code.

We note section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold report numbers 09-83613, 10-65010, 10-20982, 10-37142, and 10-64170 under section 552.108(a)(1).

We note portions of report number 08-30715 are subject to section 552.130 of the Government Code. Section 552.130 of the Government Code excepts 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.”¹ Gov’t Code § 552.130(a). The department must, therefore, withhold the

¹The 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).

Texas driver's license numbers we have marked in report number 08-30715 under section 552.130 of the Government Code.²

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 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report numbers 01-80318, 04-72075, 04-72080, 04-83588, 05-7158, 05-74868, 06-16410, 07-54804, 08-44194, 09-41915 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold report numbers 05-2432, 10-59329, and 10-64175 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold report numbers 09-83613, 10-65010, 10-20982, 10-37142, and 10-64170 under section 552.108(a)(1) of the Government Code. The department must withhold the Texas driver's license information we have marked in report number 08-30715 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

Ref: ID# 405468

Enc. Submitted documents

c: Requestor
(w/o enclosures)