



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2011

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2011-01605

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# 407511 (ORR# 10-3040).

The McKinney Police Department (the "department"), which you represent, received a request for all records pertaining to six named individuals. 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 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. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). 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, in part, requires the department to compile unspecified law enforcement records, thus implicating the privacy of the named individuals. We note, however, the requestor has provided a form signed by the named individuals authorizing the requestor to receive the requested information. Thus, as the named individuals' authorized representative, the requestor has a special right of access to information that would ordinarily be withheld to protect the named individuals' privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person

to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the requestor has a special right of access to the information at issue, and the department may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

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* Fam. Code § 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, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You assert report numbers 95-145-0042 and 01-009273 involve allegations of 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 report number 01-009273, which we have marked, is subject to section 58.007 of the Family Code. It appears none of the exceptions in section 58.007 apply; therefore, report number 01-009273 is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

We note, however, that section 58.007 is inapplicable report number 95-145-0042 because the juvenile delinquent conduct at issue occurred before September 1, 1997. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977)

(concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 only 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). In this instance, report number 95-145-0042 pertains to a juvenile engaged in delinquent conduct before January 1, 1996. *See id.* § 51.03 (defining "delinquent conduct"). Therefore, report number 95-145-0042 is confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code.

Next, you claim that the remaining information is excepted under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the remaining information pertains to criminal investigations that have been closed with no charges being filed. Accordingly, you contend that the investigations at issue have been concluded and did not result in convictions or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable to the remaining information.

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 Co. 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 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may generally withhold the remaining information under section 552.108(a)(2) of the Government Code.

We note that chapter 411 of the Government Code constitutes "applicable state law" in this instance. Section 411.1285(a) of the Government Code provides in part that "[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas 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, Family Code."<sup>1</sup> *See* Gov't Code § 411.1285(a); *see also* Fam.

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<sup>1</sup>A "domestic relations office" is defined as "a county office that serves families, county departments, and courts to ensure effective implementation of this title." Fam. Code § 203.001(2).

Code ch. 203 (governing administration of domestic relations offices). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Texas Department of Public Safety] criminal history record information maintained by the [Texas Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). We note the information subject to sections 58.007 and 51.14 of the Family Code does not contain any criminal history record information that relates to any person who is the subject of the social study. However, some of the information subject to section 552.108(a)(2) contains criminal history record information. However, a domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

The requestor states that she has been assigned by the Dallas County Family District Court "to complete a court ordered social study" involving the individuals named in the request. *See* Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Therefore, if the department determines the information at issue relates to a person who is a party to a proceeding in which the Dallas County Family District Court is providing services permitted under chapter 203 of the Family Code, then the department must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information, the department may withhold the remaining information at issue under section 552.108(a)(2). However, if the department determines that the information at issue does not relate to a person who is a party to a proceeding in which the Dallas County Family District Court is providing services permitted under chapter 203 of the Family Code, then with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2).

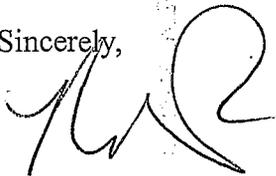
In summary, the department must withhold report number 01-009273 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The

department must withhold report number 95-145-0042 under section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code. If the department determines the information at issue relates to a person who is a party to a proceeding in which the Dallas County Family District Court is providing services permitted under chapter 203 of the Family Code, then the department must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. In that instance, with the exception of basic information, the department may withhold the remaining information at issue under section 552.108(a)(2) of the Government Code. However, if the department determines that the information at issue does not relate to a person who is a party to a proceeding in which the Dallas County Family District Court is providing services permitted under chapter 203 of the Family Code, then with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code.

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/vb

Ref: ID# 407511

Enc. Submitted documents

c: Requestor  
(w/o enclosures)