



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 16, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-03634

Dear Mr. Wallach:

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# 411453 (Fort Worth PIR No. W005795).

The Fort Worth Police Department (the "department") received a request for all records pertaining to a named individual; all records, including 9-1-1 calls for four specified addresses; and all records, including accident reports, for a specified vehicle. You state you have released some information to the requestor. You also state you have redacted Texas motor vehicle record information relating to individuals other than the requestor under section 552.130 of the Government Code pursuant to previous determinations issued to the department and social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 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

¹See Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007); see also Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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) (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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note information relating to routine traffic violations does not implicate privacy concerns. *Cf. Gov't Code § 411.081(b)*.

In part, the present request requires the department to compile unspecified police records concerning 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 information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note that the requestor also seeks information related to specified addresses and a specified vehicle. Further, you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the named individual's common-law right to privacy. Therefore, we will address your claimed exceptions for this information.

Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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 at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree report number 09-50430 pertains to juvenile delinquent conduct. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for the purposes of section 58.007). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find report number 09-50430, along with its related call sheet and audio recording, is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers that are furnished by a 911 service provider confidential. *Id.* at 2. Section 772.218 applies to an emergency communications district for a county with a population of more than 860,000.

You state that the City of Fort Worth is part of an emergency communications district established under section 772.218. You explain that the information you have highlighted was furnished by a 9-1-1 service provider. We note, however, that you have also marked 9-1-1 callers’ names in addition to addresses and telephone numbers on the CAD records. We note that only the originating addresses and telephone numbers of 9-1-1 callers on the CAD records are confidential under chapter 772 of the Health and Safety Code. Accordingly, the department may not withhold the callers’ names under section 552.101 on this basis. Thus, the department must only withhold the information we have marked in the submitted documents and indicated in the submitted audio recording under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety 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[.]” Gov’t Code § 552.130. The department must withhold the Texas motor vehicle information you have marked under section 552.130 of the Government Code.

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 information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 09-50430, along with its related call sheet and audio recording, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked in the submitted documents and indicated in the submitted audio recording under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The department must withhold the Texas motor vehicle information you have marked 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 411453

Enc. Submitted documents

cc: Requestor
(w/o enclosures)