



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2011

Ms. Luz E. Sandoval Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-07538

Dear Ms. Sandoval Walker:

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# 418843.

The El Paso Police Department (the "department") received a request for all records related to three named individuals from August 1, 2010, to date. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information is not responsive to the request because it is not related to any of the three named individuals. This decision does not address the public availability of the non-responsive information, which we marked, and that information need not be released in response to the present request.

Next, you have not submitted information responsive to the request for records pertaining to the first individual named in the request. To the extent the department maintains information responsive to this portion of the request that existed on the date the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code exempts 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 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). This office has found that 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The requestor seeks all records for a specified time period relating to the third individual named in the request. This request requires the department to compile unspecified law enforcement records concerning the third named individual, thereby implicating this individual's right to privacy. Accordingly, to the extent the department maintains law enforcement records depicting the third 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.¹ You have submitted information about this individual that does not depict him as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of the third named individual's criminal history and it is not protected by common-law privacy. The requestor also seeks all records for the same time period relating to the second individual named in the request. The second named individual is a sixteen-year-old child of the requestor's client. The parent of a minor child is the child's authorized representative. Pursuant to section 552.023 of the Government Code, "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Because the requestor represents the child's mother, we find the request to compile unspecified law enforcement records on the child does not implicate the child's privacy. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information includes incident report numbers 11-057175, 11-011063, and 10-208315, which you marked under section 552.101 in conjunction with section 58.007

¹As our ruling for this information is dispositive, we need not address your arguments against disclosure.

of the Family Code. Section 552.101 also encompasses information that other statutes make confidential, such as section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. 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.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Juvenile law enforcement records relating to conduct indicating a need for supervision that occurred

on or after September 1, 1997, are confidential under section 58.007(c). The incident reports at issue concern reports made after September 1, 1997, that the child ran away from home. Thus, these reports involve a child allegedly engaged in conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(b)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without consent of the child’s parent or guardian for a substantial length of time or without intent to return[.]”). Thus, this information is subject to section 58.007. However, as previously noted, the requestor is the authorized representative of the child’s parent. Thus, pursuant to section 58.007(e), the department may not withhold incident report numbers 11-057175, 11-011063, and 10-208315 from the requestor under section 58.007(c). *Id.* § 58.007(e). As you raise no other exceptions to disclosure for any of the remaining information, it must be released.²

In summary, the record marked as non-responsive need not be released. To the extent the department maintains law enforcement records depicting the third individual named in the request 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 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

²If the department receives another request for this particular information from a different requestor, then it should again seek a decision from this office.

Ref: ID# 418843

Enc. Submitted documents

c: Requestor
(w/o enclosures)