



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2011

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2011-07921

Dear Mr. Gorfida:

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# 419607 (File No. 11-206).

The Richardson Police Department (the "department") received a request for information pertaining to three specified addresses, two named individuals, and the requestor for a specified time period. You state you have released some of the requested information to the requestor. You state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 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 Code § 552.101. Section 552.101 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

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 under the Act. Gov't Code § 552.147(b).

(Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found certain medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. See Open Records Decision Nos. 470 (1987), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Furthermore, this office has held that a compilation of an individual's criminal history record information 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. 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.

The present request requires the department to compile unspecified law enforcement records concerning the individuals named in the request, other than the requestor, and thus implicates their privacy rights. Therefore, to the extent the department maintains law enforcement records depicting the named individuals, other than the requestor, as suspects, arrestees, or criminal defendants, 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 several reports that do not list either of the two individuals at issue as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld on that basis under section 552.101 in conjunction with common-law privacy. Therefore, we will address your arguments against the disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201(a) which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). You contend incident report number 07-045787 is confidential under section 552.101 in conjunction with section 261.201(a) of the Family Code. Upon review, however, we find you have failed to demonstrate that the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established that this information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the department may not withhold incident report number 07-045787 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, you claim the reports you have marked in Exhibit C are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You assert the reports at issue pertain to crimes that did not result in conviction or deferred adjudication. Accordingly, we agree section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except from disclosure “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 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 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that basic information does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. Accordingly, except for basic information, the department may withhold the information you have marked in Exhibit C under section 552.108(a)(2).²

We understand you to claim that basic information in incident report numbers 06-111216, 07-045787, and 08-043387 must be withheld in its entirety on the basis of common-law privacy. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. Upon review, we find you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue in incident report numbers 06-111216, 07-045787, and 08-043387

²As our ruling is dispositive, we need not address your remaining argument against disclosure of portions of this information.

must be withheld on the basis of common-law privacy. Thus, the department may not withhold this information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, we have marked portions of the basic information in incident report numbers 06-111216, 07-045787, and 08-043387 that are highly intimate or embarrassing and of no legitimate public interest. We have also marked information in Exhibit B that is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We find none of the remaining basic information in incident report numbers 06-111216, 07-045787, and 08-043387 is intimate or embarrassing and of no legitimate concern. Therefore, none of the remaining basic information in incident report numbers 06-111216, 07-045787, and 08-043387 may be withheld on the basis of common-law privacy.

Next, you state you have redacted information in Exhibit B that you claim is subject to section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009). Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Open Records Decision No. 684 authorizes the withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. We note that section 552.130 protects personal privacy. In this instance, the requestor is one of the individuals whose privacy interests are implicated. Thus, the requestor has a right of access to her Texas motor vehicle information, and the department may not withhold that information under section 552.130. *See id.* § 552.023(a) (person has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). We note the remaining information contains Texas motor vehicle record information not subject to Open Records Decision No. 684. Accordingly, with the exception of the requestor's motor vehicle information, the department must withhold the Texas driver's license and license plate numbers you have redacted, as well as the additional Texas motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individuals, other than the requestor, as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, the department may withhold the reports you have marked pursuant to section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department also must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with

common-law privacy. The department must withhold the Texas driver's license and license plate numbers you have redacted in Exhibit B, as well as the additional Texas motor vehicle record information we 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/bs

Ref: ID# 419607

Enc. Submitted documents

c: Requestor
(w/o enclosures)