



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-09234

Dear Ms. Middlebrooks:

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# 421828 (DPD Request No. 2011-3031).

The Dallas Police Department (the "department") received a request for all reports related to a specified address from January 1, 2000 to December 31, 2001. You claim the portions of the submitted information you marked are 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.

Initially, we note that portions of the submitted 9-1-1 call sheet do not pertain to the specified address. Because the requestor seeks information related to only the specified address, we find the portions unrelated to that address are not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to the request.¹

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

¹As we are able to make this determination, we need not address your raised exceptions against disclosure of this information.

Code § 552.101. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

(a) Except as provided by section 261.203, the 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, and 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). In this instance, you represent report number 0691761-J was used or developed in an investigation by the department of alleged or suspected child abuse and three of the 9-1-1 call sheet entries document reports of suspected abuse. *See id.* §§ 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261), 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find report number 0691761-J, and the 9-1-1 call sheet entries we marked, fall within the scope of section 261.201. You do not indicate the department has adopted a rule governing the release of this type of information. Therefore, we find report number 0691761-J and the marked 9-1-1 call sheet entries are confidential pursuant to section 261.201 and must be withheld in their entirety under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

Section 552.101 also encompasses 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;

²As we are able to make this determination, we need not address your raised exceptions against disclosure of this information.

(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, "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 claim report numbers 0253784-K, 0290856-J, and 0024602-J, as well as two entries on the submitted call for service log, are confidential under section 58.007(c). Upon review, we agree report numbers 0290856-J and 0024602-J, and the call log entries we marked, pertain to children involved in either delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03(a), (b)(3) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). We have no indication the requestor is a party entitled to inspection under section 58.007. Therefore, we conclude the reports and call log entries we marked are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. Although report number 0253784-K involves a child suspect, you do not explain how the conduct at issue in that report rises to the level of delinquent conduct or conduct indicating a need for supervision as those terms are defined in the Family Code. Thus, we find you failed to demonstrate the applicability of section 58.007 of the Family Code to report number 0253784-K, and it may not be withheld on that basis.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone numbers of 9-1-1 callers the department seeks to withhold. The department must withhold the marked numbers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they were furnished by a 9-1-1 service supplier. If the marked telephone numbers were not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.318.

You also raise common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy 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. *See 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. This office has determined 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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See Open Records Decision No. 373* (1983). Upon review, we find that the remaining information you marked is highly intimate or embarrassing and of no legitimate public interest. We conclude the department must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)). Thus, the department must withhold the motor vehicle record information you have marked, as well as the information we marked, pursuant to section 552.130 of the Government Code.

In summary, the department must withhold: (1) report number 0691761-J and the 9-1-1 call sheet entries we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) report numbers 0290856-J and 0024602-J, and the call log entries we marked, under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (3) the telephone numbers you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they were furnished by a 9-1-1 service supplier; (4) the information you

marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (5) the motor vehicle record information you have marked, as well as the information we marked, pursuant to section 552.130 of the Government Code. The remaining responsive information must be released.³

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eb

Ref: ID# 421828

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The department marked social security numbers in the remaining information under section 552.147. Section 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).