



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 16, 2011

Mr. Dan T. Saluri  
Senior Assistant City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR2011-13425

Dear Mr. Saluri:

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# 430187.

The San Angelo Police Department (the "department") received a request for police reports, arrest reports, and any other information concerning a named individual. You claim 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. 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. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Furthermore, this office has determined some kinds of medical

information or information indicating disabilities or specific illnesses are protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, 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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouses files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Our office has concluded a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We find the present request requires the department to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual's right to privacy. Additionally, some of the records contain medical information that is generally protected by common-law privacy. However, the requestor might be an authorized representative for the person whose private information is at issue. Accordingly, we find the requestor might have a special right of access to information that is otherwise protected under common-law privacy. *See* Gov't Code § 552.023(a). Therefore, if the department determines the requestor is not the authorized representative of the individual at issue, then to the extent the department maintains unspecified law enforcement records that depict the individual as a suspect, arrestee, or criminal defendant, the department must withhold those records under section 552.101 of the Government Code in conjunction with common-law privacy. In that instance, the department must also withhold the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor is an authorized representative of the individual at issue, then the department may not withhold any of the requested information under section 552.101 of the Government Code in conjunction with common-law privacy, and we will consider the applicability of the department's raised exceptions.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Section 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). Upon review, we find none of the submitted information constitutes

CHRI that is confidential under the federal law or subchapter F of chapter 411 of the Government Code. We therefore conclude the department may not withhold any of the submitted information on either of those grounds under section 552.101 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides in part:

(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.

*Id.* § 58.007(c), (e), (j); *see also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). Section 58.007(c) does not apply to information relating to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review we find the reports related to case numbers 2011-0006780 and 2011-0006952 involve an individual who is seventeen or older. Additionally, the report related to case number 2009-0014868 does not involve a juvenile as a criminal offender or suspect. Accordingly, we conclude you have not established the reports related to case numbers 2011-0006780, 2011-0006952, and 2009-0014868 are subject to section 58.007 of the Family Code, and they may not be withheld under section 552.101 of the Government Code on that basis. However, we find the report related to case number 2010-0005502 involves delinquent conduct by a child occurring after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Therefore, the report related to case number 2010-0005502 is subject to section 58.007 of the Family Code. However, if the department determines the requestor is an authorized representative of the individual at issue, the requestor has a right of access to this report under section 58.007(e), and the department may not withhold it under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, section 58.007(j)(2) of the Family Code provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your argument under section 552.108 of the Government Code for this and the remaining information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state “some of these incidences are still under investigation and or pending in the County Court.” You also provide several docket sheets showing the status of various cases. However, you do not specify which sheets pertain to the submitted reports. Accordingly, we find the department has failed to demonstrate how release of any of the submitted information would interfere with the detection, investigation or prosecution of a crime. Therefore, because you have failed to demonstrate the applicability of section 552.108(a)(1) to any of the remaining information, the department may not withhold any portion of the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the department determines the requestor is not the authorized representative of the individual at issue, then (1) to the extent the department maintains unspecified law enforcement records that depict the individual as a suspect, arrestee, or criminal defendant, the department must withhold those records under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department must withhold the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) remaining information must be released. If the department determines the requestor is the authorized representative of the individual at issue, then the requestor has a right of access to all of the submitted information, and the department must release it.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 430187

Enc. Submitted documents

c: Requestor  
(w/o enclosures)