



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2011

Ms. Cara Leahy White
For City of Southlake
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2011-16628

Dear Ms. White:

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# 435987.

The City of Southlake (the "city"), which you represent, received two requests for all reports involving the requestor or any of five named individuals. You claim the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the submitted information, which you have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-10410 (2010). In Open Records Letter No. 2010-10410, this office determined, with the exception of basic information, the city's department of public safety may withhold the information at issue under section 552.108(a)(2) of the Government Code. In that instance, we found that although some of the requested information was subject to common-law privacy, the requestor was the authorized representative of the individual at issue. This request involves a different requestor with no special right of access to the information. Thus, we find the circumstances have changed and the city may not continue to rely on Open Records Letter No. 2010-10410 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that

information is or is not excepted from disclosure). Accordingly, we will address your arguments against the disclosure of the information at issue.

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 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *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, a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

We note the requestor seeks records relating to herself. Pursuant to section 552.023 of the Government Code, a person 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 seeks information concerning herself, we find this portion of the request does not implicate her privacy. Thus, the city may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

The present request also seeks all records pertaining to five named individuals other than the requestor. Thus, this portion of the request requires the city to compile the five named individuals’ criminal histories. Therefore, to the extent the city maintains law enforcement records depicting the five named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy as a compilation of the named individuals’ criminal histories. Additionally, you have submitted information in which the five named individuals are not listed as suspects, arrestees, or criminal defendants. We find this information does not implicate any individual’s right to privacy for purposes of *Reporters Committee*. Accordingly, we will address your remaining arguments under sections 552.101 and 552.108 of the Government Code for this information.

We note the information at issue includes documents filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is

expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked the documents that are subject to section 552.022(a)(17). Although you seek to withhold these documents under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for purposes of section 552.022(a)(17). Therefore, the court filed documents may not be withheld under section 552.108 of the Government Code. However, you also raise section 552.101 of the Government Code, which does constitute "other law" for purposes of section 552.022. Therefore, we will address your arguments under this section for the information subject to section 552.022, as well as your arguments for the remaining submitted information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code, which 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:

...

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

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), a "child" is defined as a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2). Upon review, we find some of the submitted information involves juveniles allegedly engaged in delinquent conduct or conduct indicating a need for supervision. Thus, this information is within the scope of section 58.007(c). However, we note the requestor in this instance is a parent of the juvenile offenders listed in the reports. Accordingly, this information may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(2) states information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). You also assert the submitted information is excepted under section 552.101 in conjunction with section 261.201 of the Family Code and common-law privacy, and under section 552.108 of the Government Code; accordingly, we will address the applicability of these exceptions to the submitted information.

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

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Id. § 261.201(a), (k). You argue some of the submitted information is subject to section 261.201. We find some of the submitted information, which we have marked, was used or developed in investigations under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). The requestor is a parent of the alleged child victims listed in the submitted information. However, the information at issue, which we have marked, reflects the requestor is suspected of having committed the alleged abuse or neglect. As such, this marked information may not be provided to the requestor pursuant to section 261.201(k). *Id.* (stating child’s parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed abuse or neglect). Thus, the information we have marked is confidential pursuant to section 261.201(a) of the Family Code, and the city must withhold it in its entirety under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). You have not established the remaining information you have marked was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, the remaining information at issue is not confidential under section 261.201(a) of the Family Code and the city may not withhold it under section 552.101 on that ground.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). We note the protections offered by sections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. A governmental body claiming section 552.108(a)(1) 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). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A).

You state offense numbers 10SP050276 and 10SP069045 relate to pending criminal investigations. Based on this representation and our review, we conclude the release of offense numbers 10SP050276 and 10SP069045 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find section 552.108(a)(1) is applicable to offense numbers 10SP050276 and 10SP069045.

You state some of the remaining information, which you have marked, relates to criminal investigations that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to the information we have marked.

We note you have marked a portion of the remaining information under both subsection 552.108(a)(1) and subsection 552.108(a)(2). Based on these conflicting representations, we are unable to determine whether the information at issue relates to an ongoing criminal case or a closed case that did not result in conviction or deferred adjudication. Thus, we conclude the city has failed to demonstrate the applicability of either subsection 552.108(a)(1) or subsection 552.108(a)(2) to the information at issue, and it may not be withheld on this basis.

Additionally, 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 “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include driver's license numbers. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the city may withhold offense numbers 10SP050276 and 10SP069045 under section 552.108(a)(1) of the Government Code. With the exception of basic information, the

city may withhold the information we have marked under section 552.108(a)(2) of the Government Code.²

We note a portion of the remaining information is subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, another state, or country is excepted from public release. 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). Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individuals, other than the requestor, as suspects, arrestees, or criminal defendants, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the court filed documents we have marked under section 552.022(a)(17) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the city may withhold offense numbers 10SP050276 and 10SP069045 under subsection 552.108(a)(1) of the Government Code and the information we have marked under subsection 552.108(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.⁴

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,

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

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note the information being released contains information to which the requestor has a right of access. Accordingly, the city must again ask this office for a decision if it receives another request for this information from a different requestor. We further note the information being released contains social security numbers that do not belong to the requestor. 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).

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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 435987

Enc. Submitted documents

c: Requestor
(w/o enclosures)