



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2011

Ms. Courtney Alvarez
City Attorney
City of Kingsville
P.O. Box 1458
Kingsville, Texas 78364

OR2011-18774

Dear Ms. Alvarez:

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# 439903 (City ID # 2011-295 through 2011-303).

The Kingsville Police Department (the "department") received nine requests from the same requestor for all information concerning ten named individuals, including information regarding a specified incident.¹ You indicate some information regarding nine of the named individuals has been released to the requestor. You state the department will redact information under section 552.147 of the Government Code² and Open Records Decision No. 684 (2009).³ You claim the submitted information is excepted from disclosure under

¹You state the department sought and received clarification of the request. *See* Gov't Code § 522.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Section 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

³Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684 at 14-15. However, on September 1, 2011, the Texas legislature

sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We first note you have not submitted any information concerning the remaining named individual sought in parts 22 and 23 of request #2011-295. To the extent information responsive to these portions of the request existed on the date the department received the request, we assume you have released it. *See* 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). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses the common-law right to 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 met. *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, we find 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 as criminal history and may not be withheld under section 552.101 on that basis.

In this instance, the requestor asks for all information concerning the named individuals. This request requires the department to compile unspecified law enforcement records concerning the remaining nine named individuals, thus implicating such individuals’ rights to privacy. Therefore, to the extent the department maintains any law enforcement records

amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d)-(e). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may redact information subject to subsections 552.130(a)(1) and (a)(3), including driver’s license numbers, only in accordance with section 552.130, not Open Records Decision No. 684. However, Texas license plate numbers, which are protected by subsection 552.130(a)(2), are not within the scope of section 552.130(c). Therefore, Texas license plate numbers may still be withheld under Open Records Decision No. 684 without requesting a decision from this office.

depicting these individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note you have submitted information regarding three incidents in which these named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of any individual and may not be withheld as a compilation of their criminal histories. Accordingly, we will address your remaining arguments against disclosure of this information.

As noted above, section 552.101 encompasses common-law privacy. Common-law privacy also protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. See *Indus. Found.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). In Open Records Decision No. 393 (1983), this office concluded that, generally, only information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. See Open Record Decision Nos. 393 at 2 (1983), 339 (1982), 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). One of the reports at issue, regarding the specified November 15, 2007 incident, relates to an alleged sexual assault. In this instance, the request indicates the requestor knows the identity of the alleged victim. Therefore, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the department must withhold the report at issue, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by statutes, such as 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct that occurred on or after September 1, 1997. Section 58.007 provides, in relevant 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.

Fam. Code § 58.007(c). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time the conduct occurred. *Id.* § 51.02(2). Report number 11-002480 reflects it involves a sixteen-year-old offender. Accordingly, we find this report involves a juvenile engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct”). It does not appear any of the exceptions in section 58.007 apply. *See id.* § 58.007(e)-(i). Therefore, report number 11-002480 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.⁴

You raise section 552.108 for the report pertaining to the incident that occurred on January 5, 2011. 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the report at issue concerns a pending criminal investigation. Based on your representation and our review of the information, we conclude release of the January 5, 2011 report would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code generally applies to this report.

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 “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. *See Open Records Decision No. 127* (1976) (summarizing

⁴Because our ruling as to this information is dispositive, we do not address your remaining argument against its disclosure.

types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the department may withhold the January 5, 2011 report under section 552.108(a)(1) of the Government Code.

In summary, to the extent the department maintains any law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the November 15, 2007 report under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 2011-002480 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, which must be released, the department may withhold the January 5, 2011 report under section 552.108(a)(1) of the Government Code.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 439903

Enc. Submitted documents

c: Requestor
(w/o enclosures)