



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2012

Ms. Elizabeth L. White  
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Houston, Texas 77056-1918

OR2012-03040

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# 446582 (League City PIR Nos. 1746 and 1767).

The League City Police Department (the "department"), which you represent, received two requests from different requestors for case reports 07-1537 and 07-4100. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> 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 (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

would be highly objectionable to a reasonable person. *Cf. United States 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You claim the present requests require the department to compile the criminal history of an individual. We note, however, the present requests are for two specified reports. Thus, the requestors do not seek a compilation of information for any specific individual. Therefore, the department may not withhold any of the submitted information under section 552.101 of the Government Code as a compilation of an individual's criminal history.

Section 552.101 of the Government Code also encompasses information protected by 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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), "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). We note section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Although you contend section 58.007 is applicable to report number 07-4100, we find this report does not identify a juvenile suspect or offender for purposes of section 58.007(c). Accordingly, we find you have not demonstrated the

applicability of section 58.007(c) of the Family Code, and the department may not withhold report number 07-4100 under section 552.101 in conjunction with section 58.007.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in pertinent part:

(a) Except as provided by Section 261.203, the 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, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, 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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

- (2) any information that is excepted from required disclosure under [the Act], or other law; and
- (3) the identity of the person who made the report.

*Id.* § 261.201(a), (k), (l)(2)-(3). We note report number 07-4100 consists of files, reports, or records used or developed in an investigation under chapter 261. Therefore, the information at issue is within the scope of section 261.201. *Id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). Accordingly, report 07-4100 is generally confidential pursuant to section 261.201(a). We note, however, the requestors are the parents of the listed child victim and neither parent is alleged to have committed the suspected abuse. Accordingly, pursuant to section 261.201(k), the department may not withhold report 07-4100 from these requestors under section 261.201(a). *See id.* 261.201(k). However, section 261.201(l)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your remaining arguments for report number 07-4100 as well as for the remaining submitted report.

Section 552.108 of the Government Code provides in pertinent part as follows:

(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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state report numbers 07-1537 and 07-4100 relate to currently inactive criminal investigations that have not been closed. You also state release of these reports would interfere with law enforcement or prosecution. Based on your representations and our

review, we conclude release of report number 07-4100 would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108(a)(1) is applicable to this information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976).

We note, however, report number 07-1537 pertains to a harassment offense that occurred in 2007. The longest possible statute of limitations for this offense is two years. *See* Pen. Code § 42.07(c) (harassment is Class A or B misdemeanor); Crim. Proc. Code art. 12.02(a) (indictment or information on Class A or Class B misdemeanor may be presented within two years from date of commission of offense, and not afterward). You have neither informed this office any criminal charges were filed within the limitations period nor explained how release of the information would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has run. Thus, we find the department has failed to demonstrate the applicability of section 552.108(a)(1) to report number 07-1537. Thus, report number 07-1537 may not be withheld under section 552.108(a)(1). However, because you also assert section 552.108(b)(1), we will address its applicability to report number 07-1537.

Section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with ongoing law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). To claim section 552.108(b)(1), a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). We find the department has not demonstrated how release of report number 07-1537 would interfere with law enforcement and crime prevention. Accordingly, the department may not withhold report number 07-1537 under section 552.108(b)(1).

We note 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 section 261.201(1)(3) of the Family Code requires that the identity of the reporting party must be withheld. Fam. Code § 261.201(1)(3). In releasing the basic information from report number 07-4100, the department must redact the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of basic information, the department may withhold the remaining information in report number 07-4100 under section 552.108(a)(1).<sup>2</sup>

You seek to withhold some information in report number 07-1537 and the basic information in report number 07-4100 pursuant to common-law privacy. As noted above, common-law privacy protects highly intimate or embarrassing information that is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The type of information considered 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. Also as noted above, a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. See *Reporters Comm.*, 489 U.S. at 764. Upon review, we find the information we have marked in report number 07-1537 is highly intimate or embarrassing and of no legitimate public interest. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information in report number 07-1537 and the basic information in report number 07-4100 do not contain any information that is highly intimate or embarrassing and of no legitimate interest. Consequently, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

You seek to withhold dates of birth of private individuals in report number 07-1537 under section 552.101 of the Government Code in conjunction with Open Records Decision No. 127 (1976). Open Records Decision No. 127, however, dealt with the withholding of a birth date, among other items, from a personal history and arrest record under section 552.108 of the Government Code. Consequently, the department may not withhold the birth dates of private individuals in report number 07-1537 under section 552.101.

You also claim section 552.130 of the Government Code for portions of the remaining information. Section 552.130 provides information relating to a motor vehicle operator’s

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

license or driver's license issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find the department must withhold the information we have marked in report number 07-1537 under section 552.130.

In summary, with the exception of the basic information, the department may withhold report number 07-4100 under section 552.108(a)(1) of the Government Code. In releasing the basic information, the department must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. With regards to report number 07-1537, the department must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold the information we have marked under section 552.130 of the Government Code; and (3) release the remaining information.

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,



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Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 446582

Enc. Submitted documents

c: Requestors  
(w/o enclosures)