



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2012

Mr. B. Chase Griffith
For the Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-03740

Dear Mr. Griffith:

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# 447874 (Flower Mound PIR No. 927-11).

The Town of Flower Mound (the "town"), which you represent, received a request for reports created during a specified time period that are related to three named individuals or two addresses. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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. 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 and the specified addresses. This request requires the town to compile unspecified law enforcement records concerning the named individuals, thus implicating such individuals' rights to privacy. Therefore, to the extent the town maintains any law enforcement records depicting these individuals as suspects, arrestees, or criminal defendants, the town 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 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 arguments against disclosure of this information.

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 11-002267 reflects it involves a fifteen-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 11-002267 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.¹ However, you have not established that any of the remaining information involves alleged juvenile delinquent conduct. Thus, none of the remaining information is confidential under section 58.007 and the town may not withhold it under section 552.101 on that ground.

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 addition, this office has determined common-law privacy protects the identifying information of juvenile offenders. *See Open Records Decision No. 384* (1983); *cf.* Fam. Code § 58.007. We find the information we have marked in the remaining information is highly intimate or embarrassing and of no legitimate public interest. The town must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.108 for report 11-041098. 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 11-041098 concerns an open and pending criminal investigation. Based on your representation and our review of the information, we conclude release of report 11-041098 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 types of information deemed public by *Houston Chronicle*). Therefore, with the exception

¹Because our ruling as to this information is dispositive, we do not address your remaining argument against its disclosure.

of basic information, which must be released, the town may withhold report 11-041098 under section 552.108(a)(1) of the Government Code.

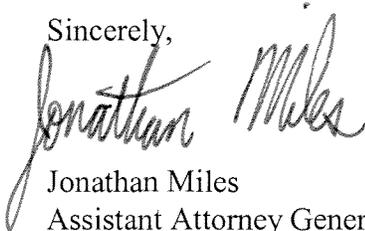
We note a portion of the remaining information is subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Therefore, the town must withhold the information we have marked under section 552.130.

In summary, to the extent the town maintains any law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold report number 11-002267 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 town may withhold report 11-041098 under section 552.108(a)(1) of the Government Code. The town must withhold the motor vehicle information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 447874

Enc. Submitted documents

c: Requestor
(w/o enclosures)