



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2012

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-06871

Dear Ms. Pemberton:

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# 452995 (Killeen No. W007445).

The Killeen Police Department (the "department") received a request for all reports on four named individuals. You state you have released some of the requested information. You claim the remaining requested 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 representative sample of information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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,

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

both prongs of this test must be established. *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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse 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). 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 and may not be withheld under section 552.101 on that basis.

You assert the present request requires the department to compile unspecified law enforcement records concerning the individuals at issue. However, we note one of the named individuals is the requestor. As such, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to her that would otherwise be withheld to protect her privacy. *See* Gov't Code § 552.023 (“[a] person or a person's authorized representative 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”). Additionally, we note the requestor is the parent of two of the individuals at issue, who are minors. Therefore, the requestor has a special right of access to information that would ordinarily be withheld to protect the minors' common-law privacy. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, information relating to the requestor and her children may not be withheld from her as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Further, after reviewing the request and the submitted information, we find the requestor is seeking, in part, specific domestic violence reports involving herself and one of the named individuals. Accordingly, this portion of the request does not implicate the right to privacy of the named individual at issue, and the incident reports of domestic violence involving the requestor and the named individual at issue may not be withheld under section 552.101 on the basis of common-law privacy. Finally, one of the reports does not list any of the named individuals as a suspect, arrestee, or criminal defendant. Thus, none of the submitted information may be withheld from the requestor as a compilation of criminal history under section 552.101 in conjunction with common-law privacy.

Common-law privacy also protects the type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, which includes 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. *See Indus. Found.*, S.W.2d at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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). Generally, only highly intimate or embarrassing information that implicates the privacy of an individual is withheld. However, in certain instances, where the requestor knows the identity of the individual at issue and the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy. In this instance, the submitted information reveals the requestor knows the identity of the individual involved, as well as the nature of the information in one of the submitted reports. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find the information we have marked in some of the remaining reports is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Section 58.007 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 the purposes of section 58.007(j), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). Upon review, we agree report number 09-003204 involves a juvenile engaged in delinquent conduct or conduct indicating a need for supervision. Thus, this report is within the scope of section 58.007(c). However, we note the requestor in this instance is a parent of the juvenile offender listed in the report at issue. Accordingly, this report 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 that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your remaining argument against disclosure of the report at issue, as well as for 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(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).

You state the information related to report numbers 07-000863, 07-016995, 07-017866, 09-000887, 09-003204, 11-009848, and 11-003313 relate to active criminal investigations. You also state report 11-003313 relates to a pending prosecution and the county attorney's office objects to its release. Based on this representation, we conclude the release of report numbers 11-003313 and 11-009848 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. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108 is applicable to report numbers 11-003313 and 11-009848.

We note, however, report numbers 07-000863, 07-016995, 07-017866, 09-000887, and 09-003204 pertain to misdemeanor assaults that occurred in the years 2007 and 2009. The statute of limitations for misdemeanor assault is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02; Penal Code § 22.01(a). More than two years have elapsed since the events giving rise to the investigations in report numbers 07-000863, 07-016995, 07-017866, 09-000887, and 09-003204, and you have not informed this office any criminal charges were filed within the limitations period. Thus, we find you have not demonstrated release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold report numbers 07-000863, 07-016995, 07-017866, 09-000887, and 09-003204 under section 552.108(a)(1) of the Government Code.

Additionally, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, with the exception of basic information, which you state has been released, the department may withhold report numbers 11-003313 and 11-009848 pursuant to section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.² Gov't Code § 552.130(a). The department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

We note the remaining information contains an e-mail address subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its public disclosure.

In summary, the department must withhold the report we have marked and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold report numbers 11-003313 and 11-009844 pursuant to section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, and the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail

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

address affirmatively consents to its public disclosure. The remaining information must be released.³

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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/em

Ref: ID# 452995

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note this requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. *See* Gov't Code § 552.023(a). Therefore, if the department receives another request for this information from a person who does not have a special right of access to this information, the department should submit this same information and request another decision from this office. *See id.* §§ 552.301(a), .302. We also note the information being released contains the requestor's own e-mail address, to which the requestor has a right of access pursuant to section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision. Accordingly, if the department receives another request from an individual other than this requestor, the department is authorized to withhold this requestor's e-mail address under section 552.137 without the necessity of requesting an attorney general decision. Further, we note the information being released contains social security numbers. 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).