



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2012

Mr. Stephen A. Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-08644

Dear Mr. Cumbie:

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# 459929 (PIR No. W016815).

The City of Fort Worth (the "city") received a request for all records concerning two specified individuals. You state some information is being released. 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 reports concerning two named individuals. This request requires the city to compile unspecified law enforcement records concerning the named individuals, thus implicating such individuals' right to privacy. Therefore, to the extent the city maintains any law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted report number 99171240, which does not depict either of the named individuals as a suspect, arrestee, or criminal defendant. This information does not implicate the individuals' privacy rights. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision 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). We find report number 99171240 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. Therefore, report number 99171240 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.

In summary, to the extent the city maintains any law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. Report number 99171240 must be withheld under section 552.101 in conjunction with section 58.007(c) of the Family 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/som

Ref: ID# 459929

Enc. Submitted documents

c: Requestor
(w/o enclosures)