



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2012

Mr. Nathan Brown  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2012-08991

Dear Mr. Brown:

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# 456035.

The El Paso Police Department (the "department") received a request for information pertaining to a named individual for the past five years. You state some information has been released. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). Section 58.007(c) provides:

(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:

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<sup>1</sup>Although you do not raise section 552.147 of the Government Code in your brief, we understand you to claim this exception based on your markings in the submitted information.

- (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), “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). Upon review, we agree report number 10-085257 involves juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). It does not appear that any of the exceptions in section 58.007 apply. Therefore, we find the department must generally withhold report number 10-085257 under section 552.101 in conjunction with section 58.007(c). However, none of the remaining information identifies a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of section 58.007.

Section 58.007(e) of the Family Code provides, however, that “[l]aw 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 [of the Family Code] [or] a criminal justice agency as that term is defined by Section 411.082, Government Code[.]” *Id.* § 58.007(e). Section 58.101 of the Family Code provides that “‘juvenile justice agency’ means an agency that has custody or control over juvenile offenders.” *Id.* § 58.101(5). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” Gov’t Code § 411.082(3)(A).

In this instance, the requestor is an employee of the New Mexico Children, Youth and Families Department (“NMCYFD”). You do not indicate, and we are not otherwise able to determine, whether the requestor seeks access to the submitted information on behalf of a juvenile justice agency or a criminal justice agency for the purposes of section 58.007(e) of the Family Code. Although you claim report number 10-085257 is also excepted under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).* Thus, if the department determines the requestor represents a juvenile

justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right to inspect report number 10-085257 under section 58.007(e) of the Family Code. We note that a release of information made confidential by section 58.007(c) under the authority of section 58.007(e) would not constitute a disclosure of confidential information to the public for the purposes of section 552.352 of the Government Code or a selective disclosure of information to the public for the purposes of section 552.007. *See* Open Records Decision Nos. 680 at 7-8 (2003), 655 at 8-9 (1997); *compare* Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized, and receiving agency is not among statute's enumerated entities). However, if the requestor has no right to inspect report number 10-085257, then it must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code as information made confidential by law.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 09-052157 relates to a case that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to report number 09-052157.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may generally withhold report number 09-052157 under section 552.108(a)(2).

As noted above, the requestor might have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person.” *See* Gov’t Code § 411.089(a). Further, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information [{"CHRI"}] maintained by the [Department of Public Safety] that relates to another person is authorized to:

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). We note CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, report number 09-052157 may contain CHRI. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (discussing limitations on release of criminal history record information). Thus, to the extent the requestor in this case represents a “criminal justice agency,” she is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2).

As previously discussed, section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Code Crim. Proc. art. 60.01(1).

As discussed above, we cannot determine whether the requestor, as an NMCYFD employee, is a representative of a criminal justice agency, or whether she intends to use the requested CHRI for a criminal justice purpose. Consequently, if the department determines this requestor is a representative of a criminal justice agency and intends to use the requested CHRI for a criminal justice purpose, then we conclude the department must make available to the requestor, from the documents that are otherwise subject to section 552.108 of the Government Code, any CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that event, except for basic information, the department may withhold the

remaining information in report number 09-052157 under section 552.108(a)(2) of the Government Code. But if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, then except for basic information, the department may withhold report number 09-052157 under section 552.108(a)(2) of the Government Code. See Attorney General Opinions DM-353 at 4 n.6, JM-590 at 4-5 (1986); see also Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

Section 552.101 of the Government Code also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy 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. *Industrial Found. v. Texas 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 established. *Id.* at 681-82. 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. Upon review, we find some of the remaining information, including the basic information in report number 09-052157, which we have marked, is highly intimate or embarrassing of no legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Consequently, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find no portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for the purposes of constitutional privacy. Consequently, the department may not withhold any of the remaining information under section 552.101 in conjunction with constitutional privacy.

You seek to withhold a driver's license number and the driver's license issuing state under section 552.130 of the Government Code. Section 552.130 excepts from disclosure

information that relates to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the department must withhold the driver's license number you have marked under section 552.130. We note, however, the issuing state of a driver's license is not motor vehicle record information for purposes of section 552.130. Thus, the department may not withhold the driver's license issuing state you have marked under section 552.130.

Section 552.147(a) of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). The requestor has a right of access to the social security number of the individual she states she represents. *See generally id.* § 552.023; Open Records Decision No. 481 at 4 (1987). Accordingly, the department may not withhold that individual's social security number from the requestor under section 552.147. However, the department may withhold the remaining social security numbers you have marked under section 552.147.

In summary, if the department determines the requestor represents a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right to inspect report number 10-085257 under section 58.007(e) of the Family Code. If the department determines the requestor does not represent a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e), then the department must withhold report number 10-085257 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department determines the requestor is a representative of a criminal justice agency and intends to use the requested CHRI for a criminal justice purpose, then the department must make available to the requestor any CHRI from report number 09-052157 and, except for basic information, the department may withhold the remaining information in report number 09-052157 under section 552.108(a)(2) of the Government Code. If the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, then except for basic information, the department may withhold report number 09-052157 under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license number you have marked under section 552.130 of the Government Code. Except for the social security number of the individual the requestor represents, the department may withhold the social security numbers you have marked under section 552.147 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](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,

A handwritten signature in black ink, appearing to read 'Ana Carolina Vieira', written over a horizontal line.

Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 456035

Enc. Submitted documents

c: Requestor  
(w/o enclosures)