



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2012

Ms. Angela M. Deluca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2012-09369

Dear Ms. Deluca:

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# 456598.

The Bryan Police Department (the "department") received one request from two requestors for a specified report and all information related to a named individual. You state you will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You claim the requested information must be withheld from one of the requestors pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which

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.

would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See 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 satisfied. *See id.* at 681-82. This office has found that 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. United States 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). We further find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You assert the present request by one of the requestors requires the department to compile the criminal history of the named individual. We note the request, in part, seeks a specified report. Further, you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy of the named individual. Additionally, the request reveals the requestor at issue requested the information at issue in conjunction with the named individual. Accordingly, we understand this requestor to be the authorized representative of the named individual. Thus, this requestor has a right of access to the named individual's private information. *See Gov't Code § 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, none of the submitted information may be withheld from the requestor at issue as a compilation of criminal history under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses 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.

...

(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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). 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(c). *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 incident. *See id.* § 51.02(2). We note Exhibits C-3, C-10, C-13, and C-21 through C-27 consist of law enforcement records that involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, Exhibits C-3, C-10, C-13, and C-21 through C-27 are generally subject to section 58.007(c). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to Exhibits C-3, C-10, C-13, C-21, and C-24. Thus, Exhibits C-3, C-10, C-13, C-21, and C-24 are subject to section 58.007(c) and must be withheld in their entirety under section 552.101 of the Government Code.² However, one of the requestors is one of the juvenile offenders listed in Exhibits C-22, C-23, C-25, C-26, and C-27. As noted above, the other requestor is the offender's authorized representative. Therefore, these requestors have a right to inspect information concerning the juvenile offender under section 58.007(e). *Id.* § 58.007(e). Accordingly, Exhibits C-22,

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

C-23, C-25, C-26, and C-27 may not be withheld from these requestors under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted before a governmental body releases information pursuant to section 58.007(e). *See id.* § 58.007(j)(2). Thus, we will consider your arguments against disclosure of this information and the remaining information.

You claim Exhibits B, B-1, C-1, C-2, C-4 through C-9, C-11, C-12, C-14 through C-20, C-22, C-23, C-25 through C-27, and E are excepted from disclosure under section 552.101 in conjunction with chapter 61 of the Code of Criminal Procedure, which deals with intelligence information pertaining to street gangs. Article 61.02 provides, in part, “a criminal justice agency . . . shall compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs.” Crim. Proc. Code art. 61.02(a). Article 61.03 provides in relevant part:

(a) A criminal justice agency may release on request information maintained under [Chapter 61 of the Code of Criminal Procedure] to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Id. art. 61.03(a). Further, article 61.05 of the Code of Criminal Procedure provides release of the information to a person who is not entitled to the information is a Class A misdemeanor. You state the information at issue is included in and maintained as part of an intelligence database and as prescribed by chapter 61 of the Code of Criminal Procedure. You assert the requestors are not entitled to the information under article 61.03. Based on your representations, we conclude the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.³

Section 552.101 of the Government Code also encompasses chapter 550 of the Transportation Code. Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for release of accident reports to a person who provides two

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. You seek to withhold the remaining information, Exhibits D1 and D2, under section 550.065(b). Upon review, we find you have not demonstrated the reports you seek to withhold under section 550.065(b) are reports completed pursuant to chapter 550 of the Transportation Code. Accordingly, the department may not withhold Exhibits D1 and D2 under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation 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 issued by an agency of this state or another state or country is excepted from public release.⁴ *See Gov't Code* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold Exhibits C-3, C-10, C-13, C-21, and C-24 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, and Exhibits B, B-1, C-1, C-2, C-4 through C-9, C-11, C-12, C-14 through C-20, C-22, C-23, C-25 through C-27, and E under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁵

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.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note some of the information being released is confidential with respect to the general public. *See Gov't Code* § 552.023(a) (person or person's authorized representative has a special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the department receives another request for this information from an individual who does not have such a right of access, the department must again seek a ruling from this office.

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/som

Ref: ID# 456598

Enc. Submitted documents

c: Requestor
(w/o enclosures)