



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2012

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2012-10757

Dear Ms Quinn:

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# 458747 (Cedar Park Ref. No. 12-505).

The City of Cedar Park (the "city") received a request for all police reports related to eleven apartment units at a specified address during a certain period. You state the city will release some of the information. You state the city will redact driver's license numbers pursuant to section 552.130 of the Government Code, social security numbers pursuant to section 552.147 of the Government Code, and license plate numbers pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 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

¹Section 552.130 of the Government Code permits a governmental body to redact driver's license numbers, which are subject to section 552.130(a)(1), without the necessity of requesting a decision from this office. See Gov't Code § 552.130(c)-(e). Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office. See *id.* § 552.147(b). Open Records Decision No. 684 permits a governmental body to withhold certain categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting a decision from this office. See ORD 684.

(Tex 1976). To demonstrate the applicability of common-law privacy, 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 courthouses 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. You seek to withhold the submitted information on the grounds that it requires the city to compile unspecified criminal history records. However, we note the requestor seeks reports related to specified locations, not individuals. Thus, we find this request does not implicate the privacy interest of a named individual, and the city may not withhold the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 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:

(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.

Id. § 58.007(c). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the information we have marked for release is not confidential under section 58.007(c) and may not be withheld under section 552.101 of the Government Code on this basis. *See Open Records Decision No. 478 at 2* (1987) (language of confidentiality statute controls scope of protection). However, the remaining information you have marked under section 58.007 involves delinquent conduct by a child or conduct indicating a need for supervision that occurred after September 1, 1997.

See Family Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Further, it does not appear any of the exceptions in section 58.007 apply. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Upon review, we find the information you have marked, and the additional information we have marked, was used or developed in an investigation of alleged child abuse or child neglect. *See id.* §§ 261.001 (defining “neglect” for purposes of chapter 261 of the Family Code), 261.001(1)(E) (definition of “abuse” for purposes of Fam. Code ch. 261 includes indecency with a child under Penal Code section 21.11); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261), Penal Code § 21.11(a) (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age). You state the city has not adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the city must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. *See Indus. Found.*, 540 S.W.2d at 685. This office has determined some kinds of medical information or information indicating disabilities or specific illnesses are protected by 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). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime [or]

(2) 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)(1), (2). Section 552.108(a)(1) is applicable to information pertaining to a pending criminal investigation or prosecution. *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). Section 552.108(a)(2) protects law enforcement records pertaining to a criminal investigation or prosecution that concluded in a final result other than a conviction or a deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked pertains to pending investigations and prosecutions. Thus, we find the release of that information would interfere with the detection, investigation, and prosecution of crime, and section 552.108(a)(1) is generally applicable to that information. You further state the additional information you have marked relates to investigations that have concluded in a result other than conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to that information.

We note, however, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code and the information you have marked under section under section 552.108(a)(2) of the Government Code.²

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country.

²As our ruling is dispositive, we do not address your assertion of subsections 552.108(b)(1) and 552.108(b)(2) of the Government Code.

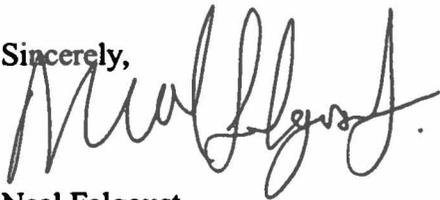
Gov't Code § 552.130(a)(2). Upon review, we find the city must withhold the vehicle identification numbers you have marked under section 552.130 of the Government Code.

In summary, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold 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 city may withhold the information you have marked under section 552.108(a)(1) of the Government Code and the information you have marked under section 552.108(a)(2) of the Government Code. The city must withhold the vehicle identification numbers you 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 458747

Enc. Submitted documents

c: Requestor
(w/o enclosures)