



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2012

Ms. Donna L. Johnson  
Counsel for the City of Cleveland  
Olson & Olson, L.L.P.  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2012-12034

Dear Ms. Johnson:

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# 460913 (Ref: COC12-027).

The City of Cleveland (the "city"), which you represent, received a request for all records pertaining to a named individual. You state the city will redact information pursuant to sections 552.130,<sup>1</sup> 552.136,<sup>2</sup> and 552.147<sup>3</sup> of the Government Code. You claim the

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<sup>1</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3), including a driver's license number, without the necessity of requesting a decision from this office. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

<sup>2</sup>Section 552.136(c) of the Government Code authorizes a governmental body to redact from the requested information it discloses, without the necessity of requesting a decision from this office, a credit card, debit card, charge card, or access device number. Gov't Code § 552.136(c) (governmental body may redact information described by subsection 552.136(b) from any information the governmental body discloses without necessity of requesting decision from attorney general); *see id.* (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.136(c) to attorney general); *id.* (requiring governmental body that withholds information pursuant to section 552.136(c) to provide notice to requestor).

<sup>3</sup>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).

submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.117 of the Government Code. 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 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 (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. We note the present request requires the city to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual’s right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 in conjunction with common-law privacy.

We further note that you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is not part of the named individual’s criminal history compilation and may not be withheld under section 552.101 on this basis. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Fam. Code § 261.201(a). You seek to withhold the report for case number 12-0699 under section 261.201(a) of the Family Code. Upon review, however, we find you have failed to demonstrate how the information at issue pertains to a report made or an investigation conducted under Chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we find none of the information at issue is confidential pursuant to section 261.201 of the Family Code. Accordingly, the city may not withhold the report for case number 12-0699 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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. 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.

*Id.* § 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). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.007(c). You seek to withhold the report for case number 12-0699 under section 58.007(c) of the Family Code. Upon review, we find the information at issue does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find none of the submitted information is confidential pursuant to section 58.007 of the Family Code. Accordingly, the city may not

withhold the report for case number 12-0699 under section 552.101 of the Government Code on that basis.

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 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, and provide documentation demonstrating, the report for case number 11-2072 pertains to a pending criminal investigation with the city’s police department. Based on your representations and our review, we conclude the release of the information at issue 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).

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, except for the basic information, the city may withhold the report for case number 11-2072 under section 552.108(a)(1) of the Government Code.<sup>4</sup>

You have marked social security numbers in the report for case number 12-0699. As you acknowledge, 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. As noted above, you state the city will redact these social security numbers. However, we note the report for case number 12-0699 reveals the requestor is the parent of the minor children involved in the report. Therefore, he has a right of access to his minor children’s social security numbers under section 552.023 of the Government Code, and this information, which we have marked for release, may not be withheld from him under section 552.147. *See* Gov’t Code § 552.023(a). The city may withhold the remaining social security numbers you have marked in the report for case number 12-0699 under section 552.147 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 in conjunction with common-law privacy. Except for the

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the report for case number 11-2072, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

basic information, the city may withhold the report for case number 11-2072 under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the city may withhold the remaining social security numbers you have marked in the report for case number 12-0699 under section 552.147 of the Government Code. The city must release the remaining information.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 460913

Enc. Submitted documents

c: Requestor  
(w/o enclosures)