



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2013

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2013-01640

Dear Mr. Gorfida:

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# 477356 (RPD File No. 12-827).

The Richardson Police Department (the "department") received a request for all reports involving the requestor's address during a specified period of time and information pertaining to a specified harassment case. 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.

Initially, we must address the department's procedural obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). The submitted information shows, and in separate correspondence you indicate, the instant request for information was received on October 30, 2012. However, you assert the request for information was received on November 12, 2012. On November 7, 2012, the department provided the requestor with a cost estimate pursuant to section 552.2615 of the Government Code and, on November 12, 2012, the requestor complied with section 552.2615 by accepting the charges. *See id.* § 552.2615(a), (b). We note section 552.2615 of the Government Code provides the submission of an estimate of charges to the requestor does not start over or toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) ("The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G [of the Act]."). Thus, the request for

information was received on October 30, 2012, and the department's ten-business-day deadline to request a ruling was November 13, 2012. The envelope in which the department submitted its request for a ruling bears a meter mark of November 14, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). We note section 552.108 of the Government Code is discretionary in nature. This exception serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.108. You also raise sections 552.101 and 552.130 of the Government Code. Because sections 552.101 and 552.130 can provide compelling reasons to withhold information, we will address the applicability of these sections to 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 information protected by other statutes, such as section 58.007 of the Family Code, which 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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision by a child that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). For purposes of section 58.007(c), a “child” is 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 find portions of the submitted information, which we have marked, involve children allegedly engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Thus, the information we have marked is confidential pursuant to section 58.007(c) of the Family Code. Although the requestor is the parent of one of the juvenile offenders, we note the offender is now an adult. Therefore, the requestor does not have a right of access to the offender’s records under section 58.007(e). *See id.* § 58.007(e). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. 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 of the Government Code on that basis.

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 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.

Id. § 261.201(a). Upon review, we find portions of the remaining information, which we have marked, were used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not

had the disabilities of minority removed for general purposes). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information we have marked is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. However, you have failed to demonstrate any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. Thus, we conclude none of the remaining information is confidential under section 261.201 of the Family Code and none of it may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "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." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find you have failed to demonstrate how any portion of the remaining information constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that: (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. *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 established. *See id.* at 681-82. The types 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. This office has found 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 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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). This office also has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 at 9-12 (1992), 545 at 4 (1990), 523 at 4 (1989), 373 at 4 (1983).

Generally, only highly intimate information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, we understand the requestor to know the identity of the individual named in the reports we have marked and the circumstances surrounding the incidents involved. Accordingly, we conclude the reports we have marked must be withheld in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated, and the submitted information does not reflect, a situation in which the remaining reports at issue must be withheld in their entireties to protect an individual's privacy interest.

Nevertheless, upon review, we find some of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. We note, however, some of the information we have marked may pertain to a deceased individual. Privacy is a personal right that lapses at death; therefore, a deceased individual has no common-law right to privacy. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Therefore, we must rule conditionally. To the extent the information we have marked pertains to living individuals, the department must generally withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked pertains to a deceased individual, that information may not be withheld under section 552.101 in conjunction with common-law privacy. Regardless, none of the remaining information is highly intimate or embarrassing and a matter of no legitimate public interest. Accordingly, none of it may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state

or another state or country. Gov't Code § 552.130. Section 552.130 is designed to protect the privacy of individuals and, as previously noted, the right to privacy expires at death. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. We note some of the information we have marked under section 552.130 may pertain to an individual who is deceased. Therefore, we must rule conditionally. To the extent the information we have marked pertains to living individuals, the information we have marked must generally be withheld under section 552.130. However, to the extent the information we have marked pertains solely to a deceased individual, the department may not withhold the marked motor vehicle record information in the remaining information under section 552.130. Some of the motor vehicle record information may pertain to a deceased individual's vehicle. This information must be withheld if a living individual, other than the requestor, owns an interest in the vehicle. If the requestor owns an interest in the vehicle, the information pertaining to the vehicle may not be withheld from her under section 552.130. *See Gov't Code § 552.023(a)* (person or person's authorized representative has 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 individuals request information concerning themselves).

Finally, we note common-law privacy and section 552.130 of the Government Code protect personal privacy. In this instance, the requestor is the spouse of one of the individuals whose information is at issue and may be acting as his authorized representative. As such, if the requestor's spouse is a living individual, the requestor may have a right of access under section 552.023 of the Government Code to the marked information that would otherwise be withheld to protect his personal privacy. *See Gov't Code § 552.023(a)*; ORD 481 at 4. Accordingly, if the requestor is the authorized representative of her spouse, and her spouse is alive, she has a right of access to the information pertaining to her spouse and that information may not be withheld from her under common-law privacy or section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and in conjunction with section 261.201 of the Family Code. To the extent the information we have marked pertains to living individuals, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked pertains to living individuals, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, the information pertaining to a vehicle we have marked may not be withheld under section 552.130 of the Government Code from the requestor if the requestor owns an interest in the vehicle. If the requestor is the authorized representative of her spouse, and her spouse is alive, any information pertaining to her spouse that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.130 of the

Government Code may not be withheld from her on those bases. The remaining information must be released.¹

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 477356

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information to be released includes a social security number. Section 552.147 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. See Gov't Code § 552.147(b).