



ATTORNEY GENERAL OF TEXAS
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January 31, 2013

Mr. Matthew C. G. Boyle
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OR2013-01801

Dear Mr. Boyle:

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# 477581.

The City of Hurst (the "city"), which you represent, received a request for all criminal records involving a named individual.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² 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

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Although you raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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. *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. *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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request seeks all records pertaining to a named individual. Thus, this request requires the city to compile the named individual's criminal history. 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 such information under section 552.101 in conjunction with common-law privacy. However, you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. We find this information does not consist of a compilation of the individual's criminal history, and may not be withheld under section 552.101 on that basis. Accordingly, we will consider your remaining arguments for this information.

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(c), which reads 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.

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. *See id.* § 51.02(2). Upon review, we find report number 06-1607 consists of a law enforcement record that involves alleged 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 any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find the city must withhold report number 06-1607 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³ Additionally, report number 04-1379 also appears to pertain to delinquent conduct that occurred after September 1, 1997. However, we are unable to determine the ages of the offenders at issue in report number 04-1379. Accordingly, we must rule conditionally. It does not appear any of the exceptions in section 58.007 apply to this information. Thus, to the extent any of the offenders at issue in report number 04-1379 were ten years of age or older and under seventeen years of age at the time the conduct occurred, report number 04-1379 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, if the information at issue pertains to offenders who were not ten years of age or older and under seventeen years of age at the time the conduct occurred, report number 04-1379 may not be withheld under section 552.101 in conjunction with 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides as follows:

(a) [T]he 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 report number 04-7567 was used or developed in an investigation of alleged child abuse or neglect conducted by the city’s police department. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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). Therefore, this information falls within the scope of section 261.201(a). As you do not state the investigating agency has adopted a rule that governs the release of this type of information, we assume none exists. Given that assumption, we conclude report number 04-7567 is confidential under section 261.201(a) of the Family Code, and the city must withhold it in its entirety under section 552.101 of the Government Code.⁴ See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 that states obtain from the federal government or other states. See Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov’t Code § 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. See *id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090-.127. Furthermore, 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. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. See *id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find the information we have marked consists of CHRI the city must withhold from disclosure under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Common-law privacy also protects information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children,

⁴As our ruling is dispositive, we need not address your argument against disclosure.

psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See* 540 S.W.2d 668, 683. This office has also 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find portions of the remaining information are highly embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

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 has concluded in a final result other than a conviction or deferred adjudication. You assert report numbers 07-9033, 09-7223, 09-8021, 09-9308, and 11-1498 relate to cases that did not result in conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127. Thus, with the exception of the basic information, which must be released, the city may withhold report numbers 07-9003, 09-7223, 09-8021, 09-9308, and 11-1498 under section 552.108(a)(2) of the Government Code.⁵

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]” *See* Gov’t Code § 552.130(a)(1)-(2). Therefore, we find the city must withhold the information we have marked under section 552.130 of the Government Code. We note section 552.130(c) of the Government Code authorizes a

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See id.* § 552.130(c).

We note a portion of the remaining information is subject to section 552.136 of the Government Code, which provides “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”⁶ *Id.* § 552.136. Upon review, we find the city must withhold the credit card numbers we have marked under section 552.136 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 such information under section 552.101 in conjunction with common-law privacy. The city must withhold report number 06-1607 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent any of the offenders at issue in report number 04-1379 were ten years of age or older and under seventeen years of age at the time the conduct occurred, the city must withhold report number 04-1379 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must also withhold report number 04-7567 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, which must be released, the city may withhold report numbers 07-9003, 09-7223, 09-8021, 09-9308, and 11-1498 under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The city must release the remaining information.⁷

Finally, you ask this office to issue a previous determination that would permit the city to withhold license plate information under section 552.130(a)(2) of the Government Code

⁶The 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).

⁷We note the information being released contains social security numbers. 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. *See Gov’t Code* § 552.147(b).

without the necessity of requesting a decision from this office.⁸ We decline to issue such a previous determination at this time. Accordingly, 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 477581

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁸Open Records Decision No. 684 (2009) permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision.