



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 2, 2013

Mr. Steven Meyer  
Assistant City Attorney  
City of Arlington Police Department  
P.O. Box 1065, Mail Stop 04-0200  
Arlington, Texas 76004-1065

OR2013-07291

Dear Mr. Meyer:

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# 488767 (Police Department Reference No. 10833-031413).

The Arlington Police Department (the "department") received a request for all records pertaining to a specified address during a specified time period. You indicate the department has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. This section encompasses information protected by other statutes, including 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.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct in need of supervision” for purposes of title 3 of the Family Code). 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). Upon review, we agree Exhibit B consists of law enforcement records involving allegations of a juvenile engaged in delinquent conduct or conduct in need of supervision occurring after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

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. *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. The type of information considered highly 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. 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. This office also has found some kinds of medical information or information indicating disabilities or specific illnesses is 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)*. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual’s privacy. Although you assert Exhibit C is confidential in its entirety pursuant to common-law privacy, we find this is not a situation where all of this information must be withheld to protect any individual’s privacy interest. However, upon review, we find the information we have marked is highly intimate or

embarrassing and of no legitimate public concern. Accordingly, this information must be withheld under section 552.101 in conjunction with common-law privacy. However, no portion of the remaining information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, title, or registration issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the information we have marked in Exhibit C under section 552.130 of the Government Code.

In summary, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked in Exhibit C under section 552.130 of the Government Code. The department 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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 488767

Enc. Submitted documents

c: Requestor  
(w/o enclosures)