



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2013

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2013-13689

Dear Mr. Weir:

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# 495685 (COSA File Nos. W015370 and W015375).

The City of San Antonio (the "city") received a request for information pertaining to two named individuals (the "first requestor") and another request for information pertaining to one of those named individuals. The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.¹

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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). You inform us the city received the requests for information on May 8, 2013. Thus, the city's ten-business-day deadline to request a ruling was May 22, 2013. However, the envelopes containing your requests for rulings from this office are meter-marked May 30, 2013. *See id.* § 552.308 (describing rules for calculating

¹We note the submitted information contains a social security number. 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).

submission dates of documents sent via first class United States mail). Therefore, the city 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption.² Therefore, we will consider whether these sections require the city to withhold 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 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. 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. A compilation of an individual's criminal history is also 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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Both requestors ask for all information held by the city concerning a named individual. 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 from both requestors under section 552.101 of the Government Code in conjunction with common-law privacy. The first requestor also asks for all information held by the city concerning a different individual. Therefore, to the extent the city maintains law

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

enforcement records depicting the other individual as a suspect, arrestee, or criminal defendant, the city must withhold such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have submitted documents that do not list either of the named individuals as a suspect, arrestee, or criminal defendant. Therefore, this information is not confidential under common-law privacy on that ground. Nevertheless, some of this information is otherwise highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. But the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007. Section 58.007(c) reads as follows:

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). Upon review, we find some of the information at issue involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007, “child” means person who is ten years of age or older and under seventeen years of age), 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, the city must withhold this information, which we have marked, 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 chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts.

See Health & Safety Code ch. 772. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than 2,000,000. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand the City of San Antonio is part of an emergency communication district established under section 772.318. We note the remaining information contains an incident detail report that pertains to a 9-1-1 call and includes a telephone number. You do not indicate, however, whether that information was furnished by a 9-1-1 service supplier. Therefore, we will rule in the alternative. To the extent the telephone number was furnished by a service supplier, we conclude it is confidential under section 772.318 of the Health and Safety Code and the city must withhold it from release under section 552.101 of the Government Code on that basis. To the extent the telephone number at issue was not furnished by a service supplier, it is not confidential under section 772.318 and the city may not withhold it from release under section 552.101 on that ground.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.³

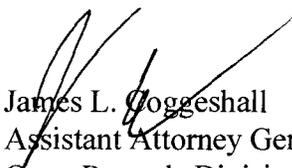
³We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e).

To conclude, the city must withhold any law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant from each requestor, respectively, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 58.007 of the Family Code. To the extent the telephone number in the incident detail report at issue was furnished by a service supplier, the city must withhold it under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must also withhold the information we have marked under section 552.130 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Goggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 495685

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)