



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2013

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2013-14603

Dear Mr. Smith:

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# 497264 (Richardson File Nos. 13-438 and 13-445).

The City of Richardson and the Richardson Police Department (collectively, the "city") received two requests from the same requestor for records of calls from the past three years made by a named person or by the requestor in regards to a named person, all reports pertaining to a specified address, including a report with a specified date, all records regarding a named individual and the requestor's daughter, including two specified calls, and a specified report. You state some information has been released to the requestor. You claim portions of the submitted information are 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.

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 the doctrine of common-law privacy, which protects information (1) containing highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) that 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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the present requests require the city to compile unspecified law enforcement records concerning the named individuals. Accordingly, we find the requests implicate the named individuals' rights to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. However, we note you have submitted information that does not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals. Further, we find the parts of the requests seeking specified reports do not implicate the named individuals' privacy interests. Accordingly, we will address your arguments for this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Id. § 58.007(c), (e). 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). Some of the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Thus, this information, which we have marked, is subject to section 58.007(c). Although the requestor is a parent of the juvenile at issue in report number 200700085238, that juvenile is now an adult. Accordingly, the requestor no longer has a right of access to her adult child's records under section 58.007(c). *See id.* § 58.007(e). Therefore, the city must withhold report number 200700085238 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state some of the remaining information, which you marked, pertains to criminal investigations that concluded in results other than convictions or deferred adjudications. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to report numbers 201200115819 and 201200144100.

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 basic "front-page" offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* 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 subject to section 552.130 of the Government Code. Thus, with the exception of the basic information, the city may withhold the information you have marked under section 552.108(a)(2) of the Government Code for report numbers 201200115819 and 201200144100.¹

¹As our ruling for this information is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You assert the complainant's identifying information in report number 201300029601 is protected under the informer's privilege. You state the complainant contacted the city's police department to report a possible violation of law. Upon review, we find the requests reflect the subject of the complaint knows the identity of the complainant. Accordingly, the city may not withhold any portion of report number 201300029601 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 also encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 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 that are 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 two million. 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.

You indicate report number 201300029601 includes the originating telephone number and address of a 9-1-1 caller that was furnished by a service supplier. You do not inform us, however, whether the city is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Nevertheless, if the city is part of an emergency communication district established under one of these sections, then, to the extent the telephone number and address of the 9-1-1 caller was supplied by a 9-1-1 service supplier, the city must withhold this information, which we marked, under section 552.101 of the Government Code in conjunction with section 772.118,

section 772.218, or section 772.318 of the Health and Safety Code. If the city is not subject to section 772.118, section 772.218, or section 772.318, or if the telephone number and address were not supplied by a 9-1-1 service supplier, then the city may not withhold this information under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318.

We note portions of the remaining information are protected under common-law privacy, the two-part test for which is discussed above. The type of information considered intimate or embarrassing under section 552.101 of the Government Code in conjunction with common-law privacy 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 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 the information you have marked under section 552.101 in conjunction with common-law privacy is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information you have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. The city must withhold report number 200700085238 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the basic information, the city may withhold the information you have marked under section 552.108(a)(2) of the Government Code for report numbers 201200115819 and 201200144100. If the city is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code, then, to the extent the telephone number and address of the 9-1-1 caller we have marked were supplied by a 9-1-1 service supplier, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 497264

Enc. Submitted documents

c: Requestor
(w/o enclosures)