



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2014

Ms. Cara Leahy White  
Counsel for the City of Saginaw  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2014-05760

Dear Ms. White:

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# 519077.

The Saginaw Police Department (the "department"), which you represent, received a request for information pertaining to the requestor and another named individual for a specified period of time, including a specified offense report. The department received two additional requests from different requestors for the specified offense report. You state the department will withhold information pursuant to Open Record Decision No. 684 (2009), section 552.130(c) of the Government Code, and section 552.147(b) of the Government Code.<sup>1</sup> You claim the requested information is excepted from disclosure under

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision. 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* 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 id.* § 552.130(d), (e). 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. *See id.* § 552.147(b).

section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the second and third requests seek only the specified offense report. Thus, the remaining submitted information is not responsive to the second and third requests. Accordingly, the department need not release information to the requestors that is not responsive to their requests, and this ruling will not address the public availability of the non-responsive information with respect to each request.

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 common-law right to privacy, which protects information if it (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 met. *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.

The first request, in part, requires the department to compile unspecified law enforcement records concerning the first requestor and the other named individual and implicates these individuals' right to privacy. However, we note the first requestor has a special right of access under section 552.023 of the Government Code to his own information that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, information relating to the first requestor may not be withheld from him as a compilation of his criminal history under section 552.101 in conjunction with common-law privacy. Further, information that refers to the other named individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the other named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual. You have also submitted the specified report which is not part of the compilation of the named individuals' criminal histories. Therefore, none of the submitted information may be withheld as a compilation of criminal history under

section 552.101 of the Government Code. Thus, we will address your remaining arguments against disclosure of the this information.

Section 552.101 of the Government Code also encompasses 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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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 find the information we have marked involves delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we find you have failed to demonstrate how any of the remaining information you seek to withhold under section 58.007(c) involves a juvenile engaged in delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses information section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(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[.]

*Id.* § 261.201(a)(1); *see id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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), 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code). Upon review, we find none of the remaining information constitutes a report of alleged or suspected abuse or neglect nor contains the identity of an individual who made a report of alleged or suspected child abuse or neglect. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.

We note portions of the remaining information are protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, this office has found common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

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(c) of the Family Code and common-law privacy. The department must release the remaining information.<sup>2</sup>

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<sup>2</sup>We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 519077

Enc. Submitted documents

cc: 3 Requestors  
(w/o enclosures)