



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2014

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2014-06671

Dear Ms. McClellan:

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# 520366 (DPD# 2014-00959).

The Dallas Police Department (the "department") received two requests for all reports involving two named individuals, including certain specified reports. You claim the submitted information is 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. Section 552.101 encompasses the doctrine of common-law 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 established. *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. We agree the present request requires the department to compile, in part, unspecified criminal history records concerning the

individuals named in the request, and thus, implicates the named individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.

However, you have submitted records the requestor specifically seeks. This information does not require the department to compile unspecified criminal history records, and this information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Nonetheless, we will consider your remaining arguments against the disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). Upon review, we find the reports related to service numbers 0007018-B and 0007019-B concern reports of alleged child abuse. *See id.* § 261.001(1)(E) (definition of "abuse" for purposes of Fam. Code ch. 261 includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11(a) (defining "child" for purposes of section 21.11 as a minor younger than 17 years of age). You have not indicated the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, these reports are confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides:

(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.

Id. § 58.007(c); *see also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). Upon review, we find the report related to incident number 0026599-Z involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). Further, it does not appear any of the exceptions in section 58.007 apply. Therefore, this report is confidential under section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.¹

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the reports related to service numbers 0131865-Y and 0037893-Z concern active criminal investigations and release of those report would interfere with the investigation and prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to those report.

However, section 552.108 does not except from disclosure basic information about a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record

¹As our ruling is dispositive for this information, we do not address your other claimed exception.

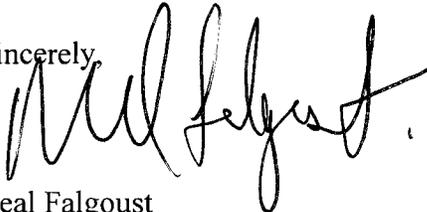
information subject to section 552.130 of the Government Code. *See* Gov't Code § 552.130. Thus, with the exception of basic information, the department may withhold the reports related to service numbers 0131865-Y and 0037893-Z under section 552.108(a)(1) of the Government Code.

In summary, to the extent the department maintains unspecified law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy. The department must withhold the reports related to service numbers 0007018-B and 0007019-B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the report related to incident number 0026599-Z under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold the reports related to service numbers 0131865-Y and 0037893-Z under section 552.108(a)(1) of the Government Code. The department must release the basic information related to these two reports.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

Ref: ID# 520366

Enc. Submitted documents

c: Requestor
(w/o enclosures)