



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 28, 2007

Mr. Michael W. Dixon  
Haley & Olsen  
510 North Valley Mills Drive, Suite 600  
Waco, Texas 76710

OR2007-17094

Dear Mr. Dixon:

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# 298586.

The McGregor Police Department (the "department"), which you represent, received a request for any and all records pertaining to two named individuals. You claim that the requested 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.

Initially, we note that the submitted information contains CRB-3 accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requestor has not provided the department with two of the three pieces of information; thus, you must withhold the accident reports under section 550.065(b).

Section 552.101 of the Government Code exempts 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 if: (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) it 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. United States 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 courthouse 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 that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. We note that you have submitted reports responsive to the request wherein neither of the named individuals is depicted as a suspect, arrestee, or criminal defendant. These reports do not constitute a compilation of these individuals’ criminal history and may not be withheld in their entirety under section 552.101.

As to the remaining information at issue, we note that the requestor in this instance may be the legal guardian of the juvenile with the privacy interest. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect the juvenile’s common-law privacy interests. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the legal guardian of the juvenile at issue, the department may not withhold any of the remaining information from him under section 552.101 in conjunction with common-law privacy. If the requestor is not the legal guardian of the juvenile at issue, to the extent the department maintains law enforcement records depicting the juvenile at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In the event that the requestor is the legal guardian of the juvenile at issue, we will address your remaining argument against disclosure. Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). 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 Subchapter 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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). The remaining information includes allegations of juvenile conduct that occurred after September 1, 1997. Thus, this information is subject to section 58.007. We note, however, that the requestor appears to be the guardian of one of the juvenile offenders. Accordingly, under section 58.007(e), the requestor may inspect or copy law enforcement records concerning this juvenile. *Id.* § 58.007(e). Therefore, to the extent the requestor is the guardian of one of the juvenile suspects in the information we have marked, this information must be released to the requestor subject to the redactions

prescribed by section 58.007(j). Accordingly, the department must redact any personally identifiable information about other juvenile suspects, offenders, victims, or witnesses listed in this information under section 58.007 (j)(1). In accordance with section 58.007(j)(2), we will also consider the applicability of section 552.130 of the Government Code to the remaining information.<sup>1</sup>

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130 (a)(1). We have marked Texas motor vehicle record information that must be withheld under section 552.130.

In summary, the department must withhold the submitted accident reports under section 550.065(b) of the Transportation Code. If the requestor is not the legal guardian of the juvenile at issue, to the extent the department maintains law enforcement records depicting the juvenile at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the legal guardian of the juvenile at issue, with the exception of personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses, the information we have marked must be released to the requestor. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

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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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 298586

Enc. Submitted documents

c: Mr. Michael Avery, Sr.  
15073 Highway AW  
Plato, Missouri 65552  
(w/o enclosures)