



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2008

Mr. Ronald J. Bounds  
City of Corpus  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2008-16684

Dear Mr. Bounds:

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# 329404.

The City of Corpus (the "city") received a request for all reports regarding a specific individual and a specific address. You state that you will release some of the requested information to the requestor. You claim that portions of the remaining information are 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 documents include a CRB-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. 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 information protected by other statutes, including section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of the accident report to a person who provides two or more of the following three pieces of information: (1) date of the accident; (2) specific location of the accident; and (3) name of any person involved in the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the governmental entity with two or more pieces of information specified by the statute. *See id.* The requestor has not provided the city with two of the three requisite pieces of information pursuant to

section 550.065(c)(4). Thus, the city must withhold the marked CRB-3 form in its entirety in accordance with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes 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 that 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. 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). Further, 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 ground. Furthermore, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf. Gov't Code § 411.082(2)(B)* (criminal history information does not include driving record information). The present request, in part, requires the city to compile unspecified law enforcement records concerning the individual at issue. 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 under section 552.101 in conjunction with common-law privacy. We have also marked portions of the submitted information that are highly intimate or embarrassing information of no legitimate concern to the public. This marked information must be withheld under section 552.101 in conjunction with common-law privacy.

However, we note that you have submitted information that does not relate to the named individual as a suspect, arrestee, or criminal defendant. In addition, the requestor also seeks information pertaining to a specific address. Because this information is not part of a compilation of the individual's criminal history, the city may not withhold it under section 552.101 in conjunction with common-law privacy. Therefore, we will address your arguments against disclosure for this information.

You assert that a portion of the remaining information is confidential under section 261.201 of the Family Code, which is encompassed by section 552.101 of the Government Code. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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, 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 you have provided no arguments showing how the submitted report, which you have marked, concerns child abuse or neglect or how it was used in an investigation of child abuse or neglect for purposes of section 261.201. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Thus, we find that you have failed to demonstrate how section 261.201 of the Family Code is applicable to the report at issue and it may not be withheld on that basis.

Next, you raise section 773.091 of the Health and Safety Code for a portion of the remaining information. Section 773.091 of the Health and Safety Code, which is encompassed by section 552.101 of the Government Code, provides in relevant part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). You have marked the information you seek to withhold under section 773.091 of the Health and Safety Code. You inform us that the submitted record was created by emergency medical services personnel. Based on your representation, we conclude that the information at issue is confidential under section 773.091. Further, you do not inform us that the exceptions to confidentiality set forth in section 773.092 and the consent provisions in section 773.093 of the Health and Safety

Code apply in this instance. Accordingly, with the exception of information subject to section 773.091(g), which must be released, we conclude that the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Next, you argue that some of the remaining information includes the originating telephone numbers and addresses of 9-1-1 callers protected from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We note that an address furnished by a caller is not confidential under section 772.318. You state that the city is within an emergency communication district that is subject to section 772.318. Based on your representations and our review, we find that the originating telephone numbers and addresses of the 9-1-1 callers, which we have marked, are confidential under section 772.318 of the Health and Safety Code. Therefore, the city must withhold this information under section 552.101 of the Government Code.

You also contend that a portion of the remaining information is excepted from disclosure under section 552.101 in conjunction with the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3-4 (1988), 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); *see* Wigmore, Evidence § 2374, at 767 (McNaughton rev. ed. 1961). The report must involve a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You state that the informant at issue reported an alleged violation of section 6-101 of the city's Code of Ordinances. You also state that the informer reported the complaint to the city's Animal Care Services Division of the city's Health Department, which is responsible for enforcing such violations. Further, you state that a violation of the city's code carries criminal penalties. Thus, based on your representations and our review, we conclude that the city has demonstrated the applicability of the common-law informer's privilege in this instance. Therefore, the city may withhold the marked identifying information under section 552.101 of the Government Code in conjunction with the informer's privilege.

We note that some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 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 or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130.

We also note that the remaining information includes an insurance policy number that is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the insurance policy number we have marked must be withheld under section 552.136 of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the city must withhold: (1) the CRB-3 form we have marked pursuant to section 550.065(b) of the Transportation Code; (2) law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, to the extent the city maintains such records, under common-law privacy; (3) the information we have marked under common-law privacy; (4) the EMS record we have marked under section 773.091 of the Health and Safety Code, except for information subject to section 773.091(g); (5) the telephone numbers and addresses we have marked under section 772.318 of the Health and Safety Code; and (6) the marked identifying information of an informant under the informer's privilege. The city must withhold the Texas motor vehicle record information and insurance policy number we have marked under sections 552.130 and 552.136 of the Government Code, respectively. 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). If the governmental body does not file suit over 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 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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/ma

Ref: ID# 329404

Enc. Submitted documents

c: Requestor  
(w/o enclosures)