



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2009

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2009-01654

Dear Ms. DeLuca:

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# 336645.

The Bryan Police Department (the "department") received a request for any police records relating to a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 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 (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 demonstrated. *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. In this instance, the requestor seeks unspecified police records pertaining to a named individual. As such, this request implicates this individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted a report in which the named individual is not listed as a suspect, arrestee, or a criminal defendant. Thus, this report does not constitute a compilation of the individual's criminal history and may not be withheld under section 552.101 in conjunction with common-law privacy on that basis. We will address your argument against disclosure of this information.

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 of the Family Code. Fam. Code § 58.007(c). For purposes of section 58.007, "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* Fam. Code § 51.02(2). Upon review, we find that police report 98060048 is a juvenile law enforcement record that pertains to delinquent conduct that occurred after September 1, 1997. Because none of the exceptions in section 58.007 apply, we determine that this information is confidential under section 58.007(c) and must be withheld in its entirety pursuant to section 552.101 of the Government Code.

In summary, to the extent that the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such records under section 552.101 in conjunction with common-law privacy. Police report 98060048 must be withheld pursuant to section 58.007 of the Family Code in conjunction with section 552.101 of the Government Code.¹

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.oag.state.tx.us/open/index_orl.php, 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

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

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen E. Stack". The signature is written in a cursive, flowing style.

Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 336645

Enc. Submitted documents

c: Requestor
(w/o enclosures)