



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
Office of the City Attorney
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-01942

Dear Mr. Phillips:

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# 335734 (Fort Worth Request No. 0906-09).

The City of Fort Worth (the "city") received a request for the records of the Fort Worth Police Department (the "department") related to four specified individuals. You state that you have redacted certain Texas motor vehicle record information relating to an individual other than the requestor under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 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 that (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). 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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the city to compile unspecified police records concerning the four named individuals. Therefore, to the extent that the city maintains law enforcement records depicting any of the individuals named in the request as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also protects information made confidential by statutes. Section 552.101 encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *see also* Fam. Code §51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"); 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Section 58.007 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 Subchapter B, D, and E.

Fam. Code § 58.007(c). Upon review, we agree that the information you have marked pursuant to section 58.007 involves juvenile delinquent conduct or conduct in need of supervision occurring after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

(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 that the information you have marked pursuant to section 261.201 involves allegations of sexual assault of a child and was created pursuant to an abuse or neglect investigation as defined in section 261.001. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under 18 years of age). Therefore, this information falls within the scope of section 261.201. You have not indicated that the city has adopted a rule governing the release of this type of information. Therefore, we assume that no such regulation exists. We thus conclude that the information you have marked pursuant to section 261.201 is confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the city must withhold this information in its entirety under section 552.101 of the Government Code.¹

Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You inform us the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code. You also indicate the telephone numbers you have marked in the submitted 9-1-1 call reports were provided by a 9-1-1 service supplier. Based on your representations, we conclude the

¹In light of this conclusion, we need not address your remaining arguments against disclosure of this information.

city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Section 552.130 of the Government Code provides in relevant part:

- (a) Information is excepted from [disclosure] if the information relates to:
- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
 - (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). You inform us that you have marked information under section 552.130 that lies beyond the scope of the previous determinations issued by this office to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). We agree that the information you have marked constitutes Texas motor vehicle registration information and is confidential under section 552.130. Thus, the city must not disclose this information to the requestor.

In summary, the city must withhold: (1) to the extent that such information exists, any law enforcement records depicting any of the individuals named in the request as a suspect, arrestee, or criminal defendant, under section 552.101 of the Government Code in conjunction with common-law privacy, (2) the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, (3) the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (4) the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, and (5) the Texas motor vehicle registration information you have marked under section 552.130 of the Government Code.² The city must release the remainder of the submitted information to the requestor.

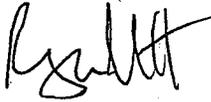
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²We note that you assert section 552.137 of the Government Code in your brief, but you have not marked, and we do not see, any information subject to this section.

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

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 335734

Enc. Submitted documents

cc: Requestor
(w/o enclosures)