



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 10, 2009

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-04764

Dear Ms. Byles:

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# 339480 (PIR # 1539-09).

The Fort Worth Police Department (the "department") received two requests from the same requestor for records involving certain named individuals at specified addresses. We note that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You state that some of the documents have been released to the requestor. You claim that the submitted 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, you acknowledge, and we agree, that the department failed to request a ruling or submit the responsive information within the statutory time period prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider whether your claimed exception to disclosure requires the department to withhold any portion of 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. This section 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). This office has held the 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 the compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all records involving several named individuals during a specified time period. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting any of the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted information in which none of the named individuals are depicted as suspects, arrestees, or criminal defendants. Thus, this information does not constitute a compilation of the individual's criminal history. Accordingly, we will address your arguments against disclosure for this information.

Section 552.101 of the Government Code also encompasses confidentiality provisions 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(c) 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.

*Id.* § 58.007(c). You assert that section 58.007 is applicable to report number 05-152367 and portions of Exhibit C-2. We note that report number 05-152367 involves juvenile delinquent conduct occurring after September 1, 1997. *See id.* §§ 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). None of the exceptions in section 58.007 appear to apply. Accordingly, the department must withhold report number 05-152367 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we note that the remaining information you have marked in Exhibit C-2 does not constitute juvenile law enforcement records. Accordingly, section 58.007 is not applicable to this information, which we have marked for release.

You claim that portions of the remaining information in Exhibit C-2 are excepted from disclosure under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication 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 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 state that Tarrant County is part of an emergency communication district established under section 772.218. You indicate that the telephone numbers and addresses that you have marked are related to 9-1-1 calls and were obtained from a 9-1-1 service provider. However, we note you have marked multiple telephone numbers on some of the 9-1-1 call reports. It is unclear which of these telephone numbers are the originating telephone numbers provided by a 9-1-1 service supplier. Thus, to the extent the marked telephone numbers and addresses are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, to the extent any of the remaining marked numbers were not supplied by a 9-1-1 service provider, section 772.218 is not applicable to this information and it may not be withheld on that basis.

We note that the remaining documents contain information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Thus, the city must withhold the information we have marked under section 552.130.

In summary, to the extent the department maintains law enforcement records depicting any of the named individuals 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. The department must withhold report number 05-152367 under section 552.101 of the Government Code in conjunction with 58.007 of the Family Code. To the extent the marked telephone numbers and addresses are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, the department must withhold the telephone numbers and addresses you have marked in Exhibit C-2 under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. The department must withhold the Texas motor vehicle information we have marked under section 552.130. The remaining information must be released 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](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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

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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).

Ref: ID# 339480

Enc. Submitted documents

c: Requestor  
(w/o enclosures)