



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2009

Mr. Bryan McWilliams
Public Safety Legal Advisor
Assistant City Attorney
City of Amarillo
200 South East Third Avenue
Amarillo, Texas 79101-1514

OR2009-05529

Dear Mr. McWilliams:

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# 341138.

The Amarillo Police Department (the "department") received a request for all complaints or incidents from 2002 to the present involving four named individuals. You state you have released some information to the requestor, but claim the remaining 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.

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 of the Government Code encompasses the common-law right to 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 met. *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. U.S. 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 request seeks unspecified records pertaining to four named individuals, and thus, implicates such individuals' privacy rights. Thus, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy. We note that you have submitted a report wherein none of the named individuals are depicted as a suspect, arrestee, or criminal defendant. Thus, this report does not constitute a compilation of the individuals' criminal history and may not be withheld under section 552.101 in conjunction with common-law privacy. Accordingly, we will address your remaining argument for this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 58.007 of the Family Code. 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.

Fam. Code § 58.007(c). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Case number 2007-00105830 involves juvenile delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this report. Therefore, case

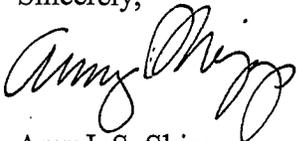
number 2007-00105830 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting 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. The department must withhold case number 2007-00105830 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You also ask this office to issue a previous determination regarding the type of information at issue in the instant case. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 341138

Enc. Submitted documents

cc: Requestor
(w/o enclosures)