



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2009

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

OR2009-07161

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# 344181 (Fort Worth Public Information Request No. 2429-09).

The City of Fort Worth (the "city") received a request for all 9-1-1 calls to or from two named individuals during a specified time period, all pictures of the named individuals from any police report, and any charges against the named individuals. You state that Texas motor vehicle information has been redacted from the submitted documents pursuant to previous determinations issued to the city under section 552.130 of the Government Code in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ You state that the city has released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, 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. This exception encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the

¹See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations).

public. See *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) (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. 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 basis.

In this instance, the request is for unspecified law enforcement records pertaining to named individuals. This request requires the city to compile the named individuals' criminal histories. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. We note that you have submitted information that does not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals. Thus, we will address your remaining arguments against the disclosure of this information.

You contend that some of the submitted calls for service reports are confidential pursuant to the doctrine of common-law privacy. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. See *Indus. Found.* at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are confidential under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although you seek to withhold two of the submitted calls for service reports in their entireties, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire reports must be withheld on the basis of common-law privacy. However, we agree that the information we have marked within the submitted calls for service reports is highly embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information we have marked within the reports under section 552.101 in conjunction with common-law privacy. The remaining information is not protected by common-law privacy and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides in pertinent part 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). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). 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 id.* § 51.02(2). You contend that one of the calls for service reports is subject to section 58.007(c). Based on your representations and our review, we find that a submitted call for service report, which we have marked, involves allegations of juveniles engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03. It does not appear that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the marked report is subject to section 58.007(c), and must be withheld under section 552.101 of the Government Code.²

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which 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 that are furnished by a 9-1-1 service provider confidential. *Id.* at 2. Section 772.218

²As our ruling is dispositive with respect to the marked calls for service report, we need not address your remaining argument against the disclosure of portions of the report.

applies to an emergency communication district for a county with a population of more than 860,000.

You state that the city is part of an emergency communication district established under section 772.218. You explain that the highlighted telephone numbers in the remaining information were furnished by a 9-1-1 service provider. Based on your representations and our review, we conclude the city must withhold the highlighted telephone numbers in the remaining information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the calls for service report we marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city must withhold the highlighted telephone numbers in the remaining information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. 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, 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 344181

Enc. Submitted documents

c: Requestor
(w/o enclosures)