



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2009

Ms. Eileen McPhee
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OR2009-07435

Dear Ms. McPhee:

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# 344525 (CMcD # 2045).

The Georgetown Police Department (the "department"), which you represent, received a request for calls for service and incident reports pertaining to criminal acts at several particular addresses from February 1, 2009 through February 28, 2009. You state most of the requested information has been released. You claim 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, we note you have redacted information from the submitted documents. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See Gov't Code § 552.301(a); Open Records Decision 673 (2000)*. Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See Gov't Code §§ 552.301(e)(1)(D)*

(governmental body must provide this office with copy of "specific information requested" or representative sample), .302.

Next, we note and you acknowledge you failed to ask for a decision from this office and state the exceptions that apply within ten business days of receiving the request for information as required by section 552.301(b) of the Government Code. *See id.* § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released unless a governmental body demonstrates a compelling reason to overcome this presumption. *See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Sections 552.101 and 552.130 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether these sections require the department to withhold the submitted information.¹

We note a portion of the submitted information consists of a Texas driver's license number you have redacted without authorization. Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the redacted Texas driver's license number under section 552.130.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. *Id.* at 683. In addition, this office has found an individual's criminal history when compiled by a governmental body and some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the*

¹The 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).

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); *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the remaining information we have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, this information must generally be withheld under section 552.101 in conjunction with common-law privacy.

We note a portion of the information you have redacted without authorization consists of originating telephone numbers of 9-1-1 calls. Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which makes the originating telephone numbers of 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. To the extent the originating telephone numbers of the 9-1-1 callers you have redacted were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the telephone numbers you have redacted must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the telephone numbers were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, the telephone numbers may not be withheld on this basis, and they must be released.

Section 552.101 also encompasses 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(c). 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). In order for section 58.007(c) to apply, a child must be identified in the information at issue as a suspect or offender. *See id.* § 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(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party. Upon review of the submitted information, we find incident report number 9007938 involves a juvenile engaged in conduct in need of supervision that occurred after September 1, 1997. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). Thus, report number 9007938, which we have marked, is generally confidential pursuant to section 58.007(c) of the Family Code.

We note, however, the requestor is a representative of the Georgetown Housing Authority, who states the requested documents will be “used for the purposes of lease enforcement and possible eviction.” The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides “[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). In Open Records Decision No. 655 (1997), this office concluded the Housing Opportunity Program Extension Act authorizes local housing authorities to obtain the criminal history record information (“CHRI”) of adult tenants. CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). A portion of the submitted information consists of information regarding the criminal conviction records of an adult tenant of public housing. Generally we would withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, as section 1437d(q)(1)(A) provides access despite any other provision of law and the requestor states the requested information will be used for lease enforcement and possible eviction, the department must release the adult tenant’s criminal conviction record information to this requestor in accordance with section 1437d(q)(1)(A) of chapter 42 of the United States Code and Open Records Decision No. 655. The department must withhold the

remaining information we have marked under section 552.101 in conjunction with common-law privacy.

Access to a juvenile tenant's CHRI is governed by section 1437d(q)(1)(C) of chapter 42 of the United States Code, which provides "[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality." 42 U.S.C. § 1437d(q)(1)(C). Juvenile justice information is confidential but may be released to "a person or entity to which [the Texas Department of Public Safety ("DPS")] may grant access to adult criminal history records as provided by Section 411.083, Government Code." Fam. Code § 58.106(a)(2). Section 411.083(b)(2) of the Government Code requires DPS to provide CHRI to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). Because housing authorities are authorized to obtain adult CHRI under sections 1437d(q)(1)(A) and 411.083(b)(2), they are also authorized to obtain similar information regarding juveniles. *See* ORD 655 (concluding section 1437d(q)(1)(C) authorizes local housing authority to obtain CHRI of juvenile tenants). The housing authority, however, may only obtain and use juvenile information in accordance with section 1437d(q)(1)(A). *See also* Gov't Code § 411.084(2)(B) (stating CHRI may only be disclosed or used as authorized or directed by another statute). Thus, any CHRI of a juvenile tenant of public housing contained in report number 9007938 must be released to this requestor in accordance with section 1437d(q)(1)(C) of chapter 42 of the United States Code and Open Records Decision No. 655. *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records). The remainder of report number 9007938 must be withheld under section 552.101 of the Government Code.

In summary, the department must withhold (1) the Texas driver's license number you have redacted under section 552.130 of the Government Code, (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) the originating telephone numbers of the 9-1-1 callers you have redacted, to the extent they were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. The department must release the CHRI of adult and juvenile tenants of public housing in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and Open Records Decision No. 655.² The remainder of report number 9007938 must be withheld under section 552.101 in conjunction with section 58.007(c) of the Family Code. The remaining information must be released.

²We note because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from a requestor without such a right of access.

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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/rl

Ref: ID# 344525

Enc. Submitted documents

c: Requestor
(w/o enclosures)