



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-09478

Dear Mr. Griffith:

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# 348411.

The City of McKinney (the "city"), which you represent, received a request for information pertaining to a specific address and three named individuals for a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 if it (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 found that 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. The present request seeks, in part, information pertaining to three named individuals. We find that this request for unspecified law enforcement records implicates the named individuals' right to privacy. 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, however, that the requestor may be the authorized representative of one of the individuals whose information is at issue. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Thus, if the requestor is the authorized representative of the individual at issue, then the requestor has a special right of access to the compilation of the named individual's criminal history, to the extent it exists.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

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, audiotapes, videotapes, 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). A portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of child abuse; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001 (4) (defining "abuse" and "neglect" for the purposes of chapter 261 of the Family Code). You do not indicate that the city has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that the information we have marked is confidential pursuant to section 261.201 of the Family Code and the city must withhold it in its entirety under

section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Next, we address your exceptions to disclosure of the remaining information. We begin with section 552.108 of the Government Code, which is the more inclusive exception you claim. Section 552.108(a)(2) excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if... it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information is related to concluded cases and incidents that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is generally applicable in this instance.

We note, however, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, most of the remaining information consists of Incident Dispatch Detail Reports. In Open Records Decision No. 649 (1996), this office concluded that information contained in a computer-assisted dispatch (“CAD”) report is substantially the same as basic information and thus is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police dispatch records or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Therefore, because the information in the Incident Dispatch Detail Reports is basic information, that information may not be withheld under section 552.108(a)(2). The city also must release basic information with respect to the incident report for case number 1-07-0372344, including a detailed description of the offense, even if that information does not literally appear on the front page of the report. *See* ORD 127 at 3-4. The city may withhold the remaining information in that incident report under section 552.108(a)(2).

You claim a portion of the information in the Incident Dispatch Detail Reports is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 encompasses sections 772.118, 772.218 and 772.318 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 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 772.118 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.

You indicate that the dispatch reports contain the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a service supplier. You do not inform us, however, whether the city is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Nevertheless, if the city is part of an emergency communication district established under one of these sections, then, to the extent the telephone numbers and addresses of the 9-1-1 callers were supplied by a 9-1-1 service supplier, the city must withhold this information contained in the dispatch report under section 552.101. If the city is not subject to section 772.118, section 772.218, or section 772.318, or if the telephone numbers and addresses of the 9-1-1 callers were not supplied by a 9-1-1 service supplier, then the city may not withhold any information in the Incident Dispatch Detail Reports under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318.

We note the remaining information contains Texas motor vehicle record information. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state.¹ Gov't Code § 552.130(a)(1)-(2). The city must withhold the information we have marked under section 552.130.

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 in conjunction with common-law privacy. However, if the requestor is acting as an authorized representative, then the requestor has a special right of access to the compilation of the individual at issue to the extent it exists.² The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the city may withhold case number 1-07-0372344 under section 552.108(a)(2)

¹ The Office of the Attorney General will raise a mandatory exception such as section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

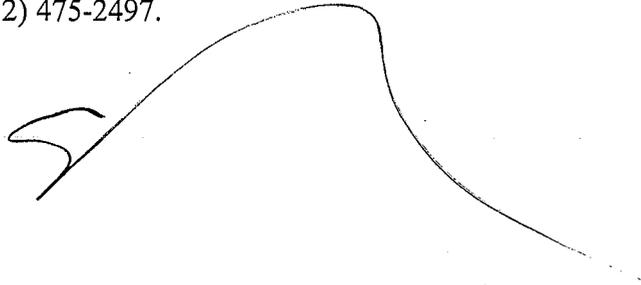
² We note that because the requestor may have a special right of access to this information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

of the Government Code. If the city is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318, then, to the extent the telephone numbers and addresses of the 9-1-1 callers were supplied by a 9-1-1 service supplier, the city must withhold the telephone numbers and addresses of the 9-1-1 callers contained in the dispatch reports under section 552.101. The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 348411

Enc. Submitted documents

c: Requestor
(w/o enclosures)