



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-11541

Dear Ms. Sandoval-Walker:

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# 352449.

The El Paso Police Department (the "department") received a request for information related to cases involving a specific person, who is a client of the requestor's law firm. You state that the department has released some responsive information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 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 section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"); *see also 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 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.

....

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Id. § 58.007(c), (e). You argue that report 03-067611 is confidential under section 58.007(c). This report involves juvenile conduct indicating a need for supervision that occurred after September 1, 1997. However, the requestor is the authorized representative of the parent of the child this report concerns. Therefore, the requestor has a right to inspect or copy report 03-067611 pursuant to section 58.007(e) of the Family Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled

to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Although you claim that report 91-115335 contains CHRI that is confidential under chapter 411, upon review we find that this report does not contain any CHRI. Accordingly, the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the common-law right of 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 public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Additionally, 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

We have marked information that the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. We note that the remaining information you have marked on this basis relates to the requestor's client. Pursuant to section 552.023 of the Government Code, a person's authorized representative has a special right of access to private information that would otherwise be excepted from public disclosure. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person

for whom she is authorized representative). Therefore, the department may not withhold any of the remaining information at issue on the basis of the common-law right to privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas driver's license numbers and motor vehicle title and registration information we have marked pursuant to section 552.130. However, this exception protects personal privacy; therefore, the requestor has a right of access to his client's section 552.130 information. *See id.* § 552.023. Thus, the department may not withhold the remaining information you have marked under this section, which relates to the requestor's client.

Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). However, this exception protects personal privacy; therefore, the requestor has a right of access to his client's social security number. *See id.* § 552.023. Accordingly, the department may withhold only social security numbers that belong to living persons other than the requestor's client under section 552.147(b).

In summary, the department: (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) must withhold the information we have marked under section 552.130 of the Government Code; (4) may withhold social security numbers belonging to living persons other than the requestor's client under section 552.147(b) of the Government Code; and (5) must release the remainder of the submitted information.¹

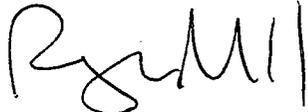
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹Because the requestor has a right of access to some information that may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan T. Mitchell". The signature is fluid and cursive, with the first name "Ryan" and last name "Mitchell" clearly distinguishable.

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 352449

Enc. Submitted documents

cc: Requestor
(w/o enclosures)