



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2009

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

OR2009-13449

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# 356136.

The El Paso Police Department (the "department") received a request for all records pertaining to a specified address during a specified time period. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is not responsive to the instant request because it was created after the date the department received the request for information. We have marked this non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law 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). The type 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. We note 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You contend that the present request for information requires the department to compile an individual's criminal history. We note, however, that the request is for information pertaining to a specified address. As such, we find that the request is not a request for a compilation of an individual's criminal history and does not implicate any individual's right to privacy. Therefore, the submitted reports may not be withheld in their entirety under section 552.101 in conjunction with common-law privacy. However, upon review, we find that a portion of report number 08-087266, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold the information we have marked in report number 08-087266 under section 552.101 of the Government Code in conjunction with common-law privacy.

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. 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02. You claim that report number 08-001040 is subject to section 58.007. Upon review, we agree that report number 08-001040 pertains to juvenile delinquent conduct that occurred after September 1, 1997. Because it does not appear that any of the exceptions in section 58.007 apply, we determine that report number 08-001040 is confidential under section 58.007(c) of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See Open Records Decision No. 649 (1996)*. We understand that the City of El Paso is within an emergency communication district that is subject to section 772.318. You have marked the information you seek to withhold under section 772.318 in the submitted computer-aided dispatch ("CAD") reports. In addition to telephone numbers and addresses, you have marked a portion of a CAD report which is not a telephone number or address. Section 772.318 only applies to telephone numbers and addresses. Therefore the department may not withhold this portion of the CAD report under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Some of the addresses you have marked may not be the originating addresses of 9-1-1 callers furnished by a service supplier but instead may be addresses supplied by the callers. If these addresses were supplied by the callers, they must be released. Furthermore, several of the addresses you have marked appear to be cellular telephone tower locations, which are not originating addresses of 9-1-1 callers. If the addresses are tower locations, they must be released. If they are the actual originating addresses of 9-1-1 callers, they and the remaining marked telephone numbers and addresses of 9-1-1 callers must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

You claim a Texas license plate number is confidential under section 552.130 of the Government Code, which 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[.]" Gov't Code § 552.130(a)(1). Therefore, the department must withhold the Texas license plate number you have marked, and the Texas driver's license number we have marked, under section 552.130 of the Government Code.

We note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Public Information Act (the "Act").

Therefore, the department may withhold the social security numbers you have marked, as well as the social security numbers we have marked, under section 552.147.¹

In summary, the department must withhold the information we have marked in report number 08-087266 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 08-001040 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the addresses you have marked in the CAD reports are the actual originating addresses of 9-1-1 callers furnished by a service supplier, and not addresses supplied by callers or tower locations, the department must withhold them and the remaining marked telephone numbers and addresses of 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the Texas driver's license number you have marked, and the Texas license plate number we have marked, under section 552.130 of the Government Code. The department may withhold the social security numbers you have marked, as well as the social security numbers we have marked, under section 552.147 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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/dls

¹We note that 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.

Ref: ID# 356136

Enc. Submitted documents

c: Requestor
(w/o enclosures)