



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 1, 2010

Ms. Susan Camp-Lee  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2010-04635

Dear Ms. Lee:

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# 374438.

The Round Rock Police Department (the "department"), which you represent, received two requests for recordings and documents from December 14, 2009. 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.

Initially, we note that the department has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). We note the department has redacted social security numbers. 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. *See id.* § 552.147. In addition, we note the department has redacted Texas license plate and driver's license numbers. Redaction of these types of information is now permitted pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009), which authorizes the withholding of ten categories of information, including Texas driver's license numbers and

license plate numbers under section 552.130 of the Government Code. However, you do not assert, nor does our review of our records indicate, that the department has been otherwise authorized to withhold the remaining Texas motor vehicle record information and driver's license information the department redacted without seeking a ruling from this office. *See id.* § 552.301(a). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See id.* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

Next, we note a portion of the submitted information relates to a sex offender who is subject to registration under chapter 62 of the Code of Criminal Procedure. 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 information protected by other statutes, such as article 62.051 of the Code of Criminal Procedure. Article 62.051 requires a sex offender registrant to provide the following information for the Department of Public Safety ("DPS") sex offender registration database: the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). We have marked information subject to article 62.005, and the department must withhold or release this information in accordance with article 62.005(b).

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

- (a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] 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). Upon review, the information we have marked consists of a report of alleged or suspected child abuse or neglect made under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Therefore, this information falls within the scope of section 261.201. You have not indicated that the department has adopted a rule governing the release of this type of information. Accordingly, we assume no such rule exists. Given that assumption, we conclude that the department 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. *See Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).*

You claim the information in Exhibit C is confidential under section 58.007. Section 552.101 encompasses section 58.007 of the Family Code. The relevant language of section 58.007 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). You state section 58.007 of the Family Code prohibits the release of the information in Exhibit C. *See id.* § 51.04(a) (title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child); *see also id.* § 51.02(2) (defining “child” as person ten years of age or older and under seventeen years of age). This conduct includes reports of juvenile runaways. We note section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Incident report numbers 090000131712 and 090000131780 do not pertain to a juvenile suspect or offender involved in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Thus, report numbers 090000131712 and 090000131780 are not confidential under section 58.007, and may not be withheld under section 552.101 on this basis. We note, however, the remaining information you have marked in Exhibit C, as well as the information we have marked in Exhibit F is subject to section 58.007(c). Accordingly, the department must withhold the remaining information in Exhibit C and the information we have marked in Exhibit F under section 552.101 in conjunction with section 58.007(c).

Section 552.101 encompasses section 550.065 of the Transportation Code. You state that the information in Exhibit E is confidential pursuant to chapter 550 of the Transportation Code. *See* Transp. Code. § 550.064 (officer’s accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the CR-3 and CR-3C accident report forms in Exhibit E, which we have marked, under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. We note that Exhibit E also contains information that does not constitute a Texas peace officer’s accident report form for purposes of section 550.065(b) of the Transportation Code. Accordingly, no portion of the remaining information in Exhibit E may be withheld under section 550.065(b) of the Transportation 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or 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 id.* at 683. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps) and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). 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 note, however, that records relating to routine traffic violations are not considered criminal history record information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review of the remaining information, we agree that, except where we have marked for release, the department must withhold the criminal history information you have marked in red, the financial information you have highlighted in green, and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude that you have failed to demonstrate the remaining information you seek to withhold is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

We next address your arguments against disclosure of the information in Exhibit D. You claim that the information in Exhibit D is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the requested information relates to pending criminal investigations, and release of the information would interfere with the investigation of the pending criminal cases. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). We note, however, the information

at issue includes a Statutory Warning and a Notice of Suspension. Review of the submitted information indicates the Statutory Warning and Notice of Suspension, which we have marked, have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find you have not shown how release of these documents will interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Accordingly, the Statutory Warning and Notice of Suspension may not be withheld under section 552.108(a)(1). Because the remaining information at issue has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is generally applicable to the remaining information at issue.

We also note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Therefore, with the exception of the Statutory Warning, Notice of Suspension, and basic information, the remaining information in Exhibit D may be withheld under section 552.108(a)(1).

We note some of the remaining information is excepted 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 [or] a motor vehicle title or registration issued by an agency of this state[.]"<sup>1</sup> *Id.* § 552.130. Accordingly, the department must withhold the Texas motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. See *id.* § 552.136(a) (defining "access device"). Therefore, the department must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.<sup>2</sup>

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<sup>1</sup>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. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

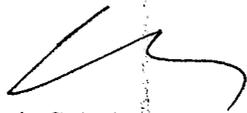
<sup>2</sup> As noted above this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 without the necessity of requesting an attorney general decision.

In summary, the department must withhold or release the information marked under article 62.005 in accordance with article 62.005(b). The department must withhold the information we have marked under section 552.101 in conjunction with section 261.201. With the exception of report numbers 090000131712 and 090000131780, the department must withhold the information in Exhibit C, and the information we have marked in Exhibit F, under section 552.101 in conjunction with section 58.007. The department must withhold the information we have marked under section 552.101 in conjunction with section 550.065. The department must withhold the criminal history information you have marked in red, the financial information you have highlighted in green, and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the Statutory Warning, the Notice of Suspension, and basic information, the department may withhold the information in Exhibit D under section 552.108(a)(1). The department must withhold the information we have marked under section 552.130 and section 552.136. The remaining information must be released.

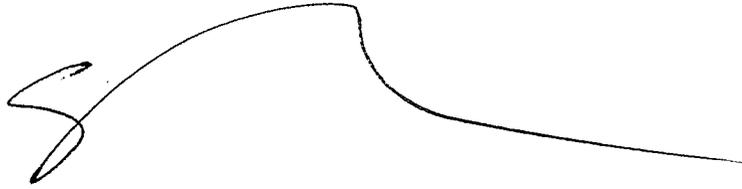
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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](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,



Chris Schulz  
Assistant Attorney General  
Open Records Division



CS/cc

Ref: ID# 374438

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)