



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 1, 2011

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

OR2011-02960

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# 410329.

The McKinney Police Department (the "department"), which you represent, received a request for criminal conviction data regarding a named individual. You claim 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 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 established. *Id.* at 681-82. A compilation of an individual's criminal history record information 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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified records concerning the individual at issue. We find this request for unspecified law enforcement records implicates the individual's right to privacy. We note, however, the requestor provides an authorization from the parent or guardian of the named individual, who is a minor. 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 required public disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Section 552.229(a) provides consent for release of information available under section 552.023 must be in writing and signed by the person or the person's authorized representative. Gov't Code § 552.229(a). Thus, under section 552.023, with proper authorization from the parent or guardian of the minor with the privacy interest, the requestor in this case has a right of access to information that would ordinarily be withheld to protect the minor's common-law privacy. Thus, the information at issue cannot be withheld from this requestor based on the minor's privacy interests.

However, section 552.023 does not apply where interests other than the person's privacy are being protected. *See, e.g.*, Open Records Decision No. 565 (1990) (provisions of Medical Practices Act making medical records confidential intended to protect more than just privacy interests of patient). In this instance, the requested information may be withheld under section 58.007 of the Family Code, which protects law enforcement interests in addition to the privacy of the subject juvenile, and under section 552.108, which protects law enforcement interests rather than privacy rights. *See, e.g.*, Open Records Decision Nos. 603 at 2-3 (1992) (no section 552.023 right of access to information encompassed by Health and Safety Code section 142.009, which protects integrity of investigatory process as well as individual's privacy interests), 587 at 3-4 (1991) (finding predecessor to Family Code section 261.201 pertaining to child abuse investigations protects law enforcement, as well as privacy interests). Therefore, we will address your remaining arguments against disclosure.

Section 552.101 of the Government Code 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). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). 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.

...

(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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

*Id.* § 58.007(c), (e), (j). Upon review, we determine the submitted information involves a juvenile accused of delinquent conduct, so as to fall within the scope of section 58.007(c). *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of the Family Code). However, as noted above, the requestor is the authorized representative of a parent or guardian of the juvenile offender. Accordingly, this requestor has a right to inspect or copy law enforcement records concerning the juvenile under section 58.007(e). *Id.* § 58.007(e). Therefore, the department may not withhold any of the submitted information on the basis of section 58.007(c). As you raise no other exception to disclosure of case number 10-001163, the department must release that case to this requestor. In doing so, however, the department must redact personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses under section 552.101 of the Government Code in

conjunction with section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). Additionally, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 58.007(j)(2). Therefore, we will consider your remaining argument against disclosure of case numbers 08-004072 and 09-030655.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state case numbers 08-004072 and 09-030655 are closed cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to these cases.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold case numbers 08-004072 and 09-030655 under section 552.108(a)(2) of the Government Code.

In summary, the department must release case number 10-001163, except for the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Except for basic information, which it must release, the department may withhold case numbers 08-004072 and 09-030655 under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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,

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<sup>1</sup>We note the requested information contains confidential information to which the requestor has a right of access. *See* Fam. Code 58.007(e), Gov't Code § 552.023(a). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, written over a vertical line of perforations.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 410329

Enc. Submitted documents

c: Requestor  
(w/o enclosures)