



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2011

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

OR2011-04687

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# 413579.

The Town of Flower Mound (the "town"), which you represent, received a request for all records involving the requestor and three named individuals during a specified time period. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ 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). 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 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

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

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. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The instant request is for all police records involving the requestor and three named individuals. This request for unspecified law enforcement records requires the town to compile criminal histories for the three named individuals, thus implicating the named individuals' rights to privacy. We note, however, two of the named individuals are the requestor's adult daughters. As such, the requestor may have a right of access under section 552.023 of the Government Code to any information the town would be required to withhold from the public to protect these individuals' privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). We are unable to determine whether the requestor is acting as the authorized representative of one or both of her daughters. Therefore, we rule conditionally as to the daughters. To the extent the town maintains law enforcement records depicting the requestor's daughters as suspects, arrestees, or criminal defendants and the requestor does not have a right of access under section 552.023, the town must withhold such information under section 552.101 in conjunction with common-law privacy. To the extent the town maintains such records and the requestor has such a right of access under section 552.023, the town may not withhold such information for each daughter for whom the requestor is the authorized representative under section 552.101 in conjunction with common-law privacy. As to the named individual who is not one of the requestor's daughters, we find, to the extent the town maintains law enforcement records depicting this named individual as a suspect, arrestee, or criminal defendant, the town must withhold such information under section 552.101 in conjunction with common law privacy.

We note you have submitted report numbers 05-41630, 05-15220, 05-10658, 05-9599, and 02-15067, which do not depict any of the named individuals as suspects, arrestees, or criminal defendants. Thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address your arguments against the disclosure of this information.

We note one of the submitted reports is subject to section 58.007 of the Family Code. Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code. The relevant portion of section 58.007 provides:

(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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(1)-(2). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), child means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). One of the submitted reports involves juvenile delinquent conduct that occurred after September 1, 1997; therefore, the submitted information is subject to section 58.007(c). In this instance, however, the requestor may be acting as the authorized representative of the individual whose information is at issue. Therefore, section 58.007(e) allows the requestor access to the juvenile's law enforcement records. *Id.* § 58.007(e). We note that section 58.007(j)(2) provides that information subject to any other exception to disclosure

under the Act or other law must also be redacted. *See id.* § 58.007(j)(2) Therefore, we will consider your argument against disclosure.

Section 552.108(a)(2) excepts from disclosure “[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 claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has 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 that the information at issue pertains to criminal cases that concluded in results other than convictions or deferred adjudications—specifically that these cases were closed and no charges were filed. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

We note, however, 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). Basic information refers to the 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). Thus, with the exception of the basic front page offense and arrest information, the town may withhold the information at issue from disclosure based on section 552.108(a)(2).

In summary, to the extent the town maintains law enforcement records depicting the three named individuals other than the requestor as suspects, arrestees, or criminal defendants, and the requestor is not acting as an authorized representative for the individuals whose information is at issue, the town must withhold such information under section 552.101 in conjunction with common law privacy. To the extent the town maintains such records regarding the requestor’s daughters and the requestor has a right of access under section 552.023, the town may not withhold such information for the daughter for whom the requestor is the authorized representative under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the town may withhold the remaining information at issue under section 552.108(a)(2) of the Government Code.²

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.

²Because the requestor has a right of access under section 552.023 of the Government Code to some of the information being released and such information is confidential with respect to the general public, if the town receives another request for this information from an individual other than this requestor, the town must again seek a ruling from this office.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 413579

Enc. Submitted documents

c: Requestor
(w/o enclosures)