



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 17, 2011

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2011-8661

Dear Mr. Gorfida:

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# 420996 (Richardson File No. 11-247).

The Richardson Police Department (the "department") received a request for information pertaining to the tenants at a specified address during a specified time period. You indicate you are withholding social security numbers pursuant to section 552.147 of the Government Code and Texas motor vehicle record information pursuant to Open Records Decision No. 684 (2009).¹ You also indicate you are releasing some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 that is considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹Section 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. Gov't Code § 552.147(b). We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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. This office has found 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the request is for information pertaining to the tenants of a specified address. Thus, this request, in part, requires the department to compile the specified individuals' criminal histories. Therefore, to the extent the department maintains law enforcement records depicting the tenants of the specified address as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

We note you have submitted information that does not depict the tenants of the specified address as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the specified individuals, and it may not be withheld as a criminal history compilation under section 552.101 in conjunction with common-law privacy. However, we will consider your remaining arguments for this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part 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). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct indicating a need for supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). 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). Upon review, we find that the information we have marked in Exhibit C involves allegations of juveniles engaged in delinquent conduct occurring after September 1, 1997. It does not appear that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the information we have marked in Exhibit C is subject to section 58.007(c), and must be withheld in its entirety under section 552.101 of the Government Code.²

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

(a) [T]he 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.

Id. § 261.201(a). Upon review, we find the report we marked in Exhibit C was used or developed in an investigation by the department of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the

²As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

disabilities of minority removed for general purposes). Accordingly, we find that the information we marked is within the scope of section 261.201 of the Family Code. You do not inform us, and we are not aware, that the department has adopted a rule that governs the release of this type of information; therefore, we assume no such rule exists. Given that assumption, we conclude the information we have marked in Exhibit C is confidential pursuant to section 261.201(a) of the Family Code, and the department must withhold it in its entirety under section 552.101 of the Government Code.³ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You claim the remaining reports in Exhibit C are excepted under section 552.108(a)(2) of the Government Code, which 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 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 remaining reports in Exhibit C relate to criminal investigations that have concluded and did not result in convictions or deferred adjudications. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable to the remaining reports in Exhibit C.

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 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). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. You claim some of the basic information in report number 09-105970 is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. As discussed above, common-law privacy 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.*, 540 S.W. at 668. 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's

³As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

privacy. In this instance, information you submitted indicates that you have already released information to the requestor that reveals the nature of the information in report number 09-105970. Therefore, to protect the privacy of the individual to whom the information relates, the department must withhold the identity and description of the complainant from the basic information in report number 09-105970 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the remaining basic information, which must be released, the department may withhold the remaining reports in Exhibit C under section 552.108(a)(2) of the Government Code.⁴

We note that Exhibit B contains some information that is subject to common-law privacy. This office has determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). Upon review, we determine the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the information we have marked in Exhibit B under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the department maintains law enforcement records depicting the tenants of the specified address as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and section 261.201 of the Family Code. With the exception of basic information, which must be released, the department may withhold the remaining reports in Exhibit C under section 552.108(a)(2) of the Government Code; however, in releasing the basic information in report number 09-105970, the department must withhold the identity and description of the complainant under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy.

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

⁴As our ruling is dispositive, we need not address your remaining arguments against the disclosure of a portion of this information.

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 cursive script that reads "Laura Ream Lemus".

Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 420996

Enc. Submitted documents

c: Requestor
(w/o enclosures)