



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 23, 2012

Ms. Judi S. Rawls  
Police Legal Counsel  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2012-05706

Dear Ms. Rawls:

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# 451263.

The Beaumont Police Department (the "department") received a request for a specified 911 call and all police records related to a named individual.<sup>1</sup> You state some responsive information has been or will be made available to the requestor. You claim the remaining requested 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 address the department's contention that the request for information is overly broad. We note a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We further note section 552.222 of the Government Code authorizes a governmental body to communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b). In this case, the

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<sup>1</sup>We note the department sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

department has reviewed its records and has identified information as responsive to the request. Accordingly, we will address the applicability of the claimed exceptions.

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. This exception 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. United States 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). We also find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks, in part, access to unspecified law enforcement records involving a named individual. Thus, this part of the request requires the department to compile the named individual’s criminal history and thereby implicates the privacy interests of the named individual. Therefore, to the extent the department maintains any records that depict the named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual’s criminal history.

However, the requestor also seeks access to information relating to a specific 911 call. That portion of the request does not require the department to compile unspecified law enforcement records and does not implicate the individual’s right to privacy for purposes of *Reporters Committee*. Thus, the information related to that 911 call, report number 2010-025061, which you have submitted in Exhibit C, may not be withheld under section 552.101 of the Government Code on privacy grounds as a compilation of criminal history information.

You also have submitted other reports in Exhibit C which do not depict the named individual as a suspect, arrested person, or criminal defendant. Thus, those reports may not be withheld under section 552.101 on privacy grounds as a compilation of criminal history information.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Prior to its repeal by the Seventy-fourth Legislature, section 51.14 provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591; *see also* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). Despite the repeal of section 51.14 of the Family Code, law enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential pursuant to section 51.14. Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14(d) (repealed 1995). A “child” is defined as a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See* Fam. Code § 51.02(2).

Report number 1995-025819 pertains to an incident that occurred prior to January 1, 1996, and lists as a suspect an individual who qualified as a “child” at the time of the offense. Further, the requestor does not fall within one of the categories in section 51.14(d) under which inspection of the records would be permitted. Upon review, we find report number 1995-025819 is confidential under former section 51.14 and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal

justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). Upon review, we find the information we have marked constitutes CHRI. Thus, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

As previously discussed, section 552.101 of the Government Code encompasses the common-law right of privacy, which protects information that is highly intimate or embarrassing and is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d 685. 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. *Id.* at 683. This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision No. 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the remaining information are also subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration, issued by an agency of this state or another state or country is excepted from disclosure. Gov't Code § 552.130(a)(1), (2). The department must withhold the information we have marked under section 552.130 of the Government Code.

The remaining information contains information subject to section 552.136 of the Government Code. Section 552.136 provides, "[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." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). This office has determined bank account numbers are access device numbers for purposes of section 552.136. *See id.*

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 552.136(a) (defining “access device”). The department must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold (1) report number 1995-025819 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code, (2) the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law, and (3) the information we have marked under section 552.101 in conjunction with common-law privacy. The department must also withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The remaining information must be released.<sup>3</sup> As our ruling is dispositive, we do not address your claim under section 552.108 of the Government Code.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

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<sup>3</sup>We note the information being released contains 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 under the Act. Gov’t Code § 552.147(b).

Ref: ID# 451263

Enc. Submitted documents

c: Requestor  
(w/o enclosures)