



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2013

Ms. Sandy Murillo  
Records Clerk  
Saginaw Police Department  
505 West McLeroy Boulevard  
Saginaw, Texas 76179

OR2013-03808

Dear Ms. Murillo:

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# 480705 (Saginaw PD Records ID# 7035, 7036, 7037).

The Saginaw Police Department (the "department") received three requests from the same requestor for information pertaining to two named individuals and a specified address. You claim the submitted information is excepted from disclosure under sections 552.101 of the Government Code.<sup>1</sup> 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." Gov't Code § 552.101. This section encompasses the common-law right to 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 met.

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<sup>1</sup>Although you raise section 552.108 of the Government Code in conjunction with section 58.007 of the Family Code, section 552.108 does not encompass other statutes. Additionally, although you raise section 552.108 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn this exception. See Gov't Code §§ 552.301, .302.

*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) (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.

Two of the present requests, in part, require the department to compile unspecified law enforcement records concerning the named individuals and thus implicate the individuals' right to privacy. Accordingly, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, you have submitted information that does not depict the named individuals as suspects, arrestees, or criminal defendants and information that pertains to the specified address. This information does not implicate the named individuals' rights to privacy, and the department may not withhold it as a compilation of criminal history under section 552.101. Accordingly, we will address your arguments for this information.

We note you have redacted originating telephone numbers and addresses of 9-1-1 callers. 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. *See Gov't Code* §§ 552.301(a), .301(e)(1)(D). The department does not assert, nor does our review of our records indicate, that the department is authorized to withhold the redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the department should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts

established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million; section 772.218 applies to an emergency communication district for a county with a population of more than 860,000; and section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

To the extent the City of Saginaw is part of an emergency communication district established under chapter 772 and the telephone number and address you have marked were furnished by a 9-1-1 service supplier, the marked information must be withheld under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. However, if the City of Saginaw is not part of an emergency communication district established under chapter 772, or if the telephone number and address you have marked were not furnished by a 9-1-1 service supplier, the department may not withhold the information under section 552.101 on this basis.

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

(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.

Fam. Code § 261.201(a). We find the information we have marked in the submitted information was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (definition of child abuse includes sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore conclude the information we have marked is confidential under section 261.201(a).

Accordingly, the marked information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup>

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), which provides as follows:

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). For purposes of section 58.007(c), a “child” is defined as a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). You raise section 58.007 for case number 05016801. Upon review, we agree the information at issue involves delinquent conduct that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. However, we are unable to determine whether the alleged suspect listed in the information at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue. Therefore, we must rule conditionally. If the suspect was ten years of age or older and under seventeen years of age at the time of the conduct, then case number 05016801 is confidential in its entirety pursuant to section 58.007(c) of the Family Code, and the department must withhold it under section 552.101 of the Government Code on that basis. If the suspect was not ten years of age or older and under seventeen years or age at the time of the conduct, section 58.007 is not applicable to case number 05016801, and it may not be withheld under section 552.101 in conjunction with section 58.007(c).

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the City of Saginaw is part of an emergency communication district established under chapter 772 and the telephone numbers and addresses you have marked were furnished by a 9-1-1 service supplier, the marked information must be withheld under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. 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. If the suspect at issue in case number 05016801 was ten years of age or older and under seventeen years of age at the time of the conduct, then case number 05016801 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Otherwise, case number 05016801 may not be withheld under section 552.101 of the Government Code on that basis. The department must withhold the motor vehicle record information marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>4</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, at (877) 673-6839. Questions concerning the allowable charges for providing public

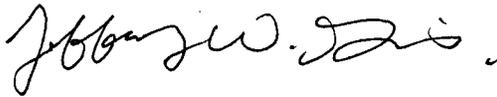
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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</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. *See* Gov't Code § 552.147(b).

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 "Jeffrey W. Giles", with a small flourish at the end.

Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 480705

Enc. Submitted documents

c: Requestor  
(w/o enclosures)