



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2014

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-03562

Dear Mr. Ortiz:

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# 516743 (El Paso ORR# W027962-121813).

The City of El Paso (the "city") received a request for police, accident, arrest, and offense reports involving a named individual. You state social security numbers will be redacted from the requested documents pursuant to section 552.147 of the Government Code.¹ You claim the remaining 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 representative sample of information.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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

¹Section 552.147(b) 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).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

satisfied. *Id.* at 681-82. This office has found 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) (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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You state the present request requires the city to compile unspecified law enforcement records concerning the named individual, thus implicating this individual's right to privacy. Thus, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common law privacy. However, you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate this individual's right to privacy. Accordingly, the city may not withhold any of this information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will address your remaining arguments against disclosure.

Section 552.101 of the Government Code 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) of the Family Code, which 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.

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 at the time of the reported conduct.

Id. §§ 51.02(2)(A), .03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Upon review, we find report numbers 03-279213 and 04-121209 involve a child engaged in delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Therefore, the city must withhold report numbers 03-279213 and 04-121209 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³

However, we find none of the remaining information identifies a juvenile suspect or offender for purposes of section 58.007, nor have you explained how the information pertains to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision as defined by section 51.03 of the Family Code. *See id.* § 51.03(a). Accordingly, we conclude you have not demonstrated the applicability of section 58.007(c) of the Family Code to the remaining information. Consequently, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You claim some of the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) of the Government Code exempts 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 some of the remaining information pertains to criminal investigations that concluded in results other than convictions or deferred adjudications. Based on this representation and our review of the information, we agree section 552.108(a)(2) is applicable to report numbers 01-238190 and 00-333230.

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 basic “front-page” offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. *Id.* Thus, with the exception of basic information, the city may withhold report numbers 01-238190 and 00-333230 under section 552.108(a)(2) of the Government Code.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

You seek to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). You state the submitted information contains identifying information of individuals who reported possible violations of criminal or civil statutes to the city's police department. Therefore, to the extent the remaining information contains identifying information of individuals who reported possible violations of criminal or civil statutes to the city's police department and the subject of the complaint does not know the identity of the complainant, the city may withhold this information under section 552.101 of the Government Code in conjunction with the informer's privilege.

We note portions of the remaining information are protected under common-law privacy, the two-part test for which is discussed above. Types of information considered intimate and embarrassing under section 552.101 of the Government Code in conjunction with common-law privacy by the Texas Supreme Court are delineated in *Industrial Foundation. Indus. Found.*, 540 S.W.2d 668, 683 (Tex. 1976). Additionally, this office has found some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note portions of the remaining information are subject to section 552.130 of the Government Code.⁴ 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 exempted from public release. Gov't Code § 552.130(a). Accordingly, the city must

⁴The 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).

withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁵

In summary, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common law privacy. The city must withhold report numbers 03-279213 and 04-121209 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, the city may withhold report numbers 01-238190 and 00-333230 under section 552.108(a)(2) of the Government Code. To the extent the remaining information contains identifying information of individuals who reported possible violations of criminal or civil statutes to the city's police department and the subject of the complaint does not know the identity of the complainant, the city may withhold this information under section 552.101 of the Government Code in conjunction with the informer's privilege. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining responsive information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/eb

⁵Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)