



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2014

Ms. Holly C. Lytle  
Assistant County Attorney  
County of El Paso  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2014-08370

Dear Ms. Lytle:

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# 522801 (El Paso County File No. OP-14-091).

The El Paso County District Attorney's Office (the "district attorney's office") received a request for its case file pertaining to a specified incident.<sup>1</sup> You state the district attorney's office has released the majority of the information to the requestor with motor vehicle record information redacted pursuant to section 552.130 of the Government Code, and social security numbers redacted under section 552.147 of the Government Code.<sup>2</sup> You further state the district attorney's office has withheld fingerprints belonging to individuals other than the requestor's client pursuant to Open Records Decision No. 684 (2009), and autopsy

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<sup>1</sup>You inform us the requestor was required to make a deposit for payment of anticipated costs for the request under section 552.263 of the Government Code, which the district attorney's office received on February 25, 2014. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

<sup>2</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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). We also note 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. *Id.* § 552.147(b).

photographs under article 49.25 of the Code of Criminal Procedure.<sup>3</sup> You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup>

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 information protected by other statutes, such as section 58.007 of the Family Code, which you argue applies to Attachment E and the information you have highlighted in Attachment F. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Fam. Code § 58.007(c). We note juvenile law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). This office has concluded section 58.007, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). However, the legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile delinquent conduct that occurred between January 1, 1996 and September 1, 1997 are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code.

The incident reports in Attachment E pertain to incidents that occurred prior to January 1, 1996, and include listed suspects who were ten years of age or older and under seventeen years of age at the time of the offenses. Further, the requestor does not fall within one of the categories in former section 51.14(d) under which inspection of the records would be permitted. Thus, the district attorney's office must withhold Attachment E in its entirety

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<sup>3</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision. We also note section 11(b) of article 49.25 of the Code of Criminal Procedure permits a governmental body to withhold a photograph or x-ray described by section 11(a) without the necessity of seeking a decision from the attorney general. Crim. Proc. Code art. 49.25, § 11(b). However, subsection (b) does not affect the required disclosure of a photograph or x-ray under subsection (a)(1) or (2). *Id.*

<sup>4</sup>We assume 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.

under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. However, portions of the information you highlighted in Attachment F pertain to conduct that occurred between January 1, 1996 and September 1, 1997, and are therefore not subject to either section 58.007 of the Family Code or the former section 51.14(d) of the Family Code. As such, the district attorney's office may not withhold any information pertaining to such conduct under section 552.101 of the Government Code on those bases. Furthermore, although the remaining information you have highlighted in Attachment F references incidents that occurred prior to January 1, 1996, the information does not constitute a juvenile law enforcement record. Accordingly, none of the remaining information you highlighted in Attachment F may be withheld under former section 51.14(d) of the Family Code in conjunction with section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we agree Attachment I constitutes medical records. Accordingly, the district attorney's office must withhold Attachment I under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Gov't Code § 411.083(a). 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code § 411.083.* 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 a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we conclude the information we have marked consists of CHRI that is confidential under section 411.083. Thus, the district attorney's office must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. However, none of the remaining information consists of CHRI for purposes of chapter 411, and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the doctrine of common-law privacy generally protects the identifying information of juvenile offenders. *See Open Records Decision No. 394* (1983); *cf.* Fam. Code § 51.14. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district attorney's office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.108 of the Government Code provides, in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information in Attachment J reflects the mental impressions and legal strategies of an attorney representing the State. Based on your representations and our review, we conclude that section 552.108(a)(4) is applicable to the information in Attachment J. As such, the district attorney's office may withhold Attachment J under section 552.108(a)(4) of the Government Code.<sup>5</sup>

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See Gov't Code § 552.130(a)(1)-(2)*. We note section 552.130 protects privacy interests. In this instance, we are unable to determine whether the motor vehicle information we have marked belongs to the requestor's client. In the event the information at issue belongs to the requestor's client, the requestor has a right of access to this information. *See id.* § 552.023(a) ("A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). To the extent the motor vehicle information we have marked does not belong to the requestor's client, the district attorney's office must withhold such information under section 552.130 of the Government Code.

In summary, the district attorney's office must withhold the information in Attachment E under former section 51.14 of the Family Code in conjunction with section 552.101 of the Government Code. The district attorney's office must withhold Attachment I under section 552.101 of the Government Code in conjunction with the MPA. The district attorney's office must withhold the information we have marked under section 552.101 in

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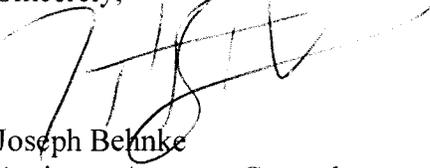
<sup>5</sup>As our ruling is dispositive for Attachment J, we need not address your remaining arguments against its disclosure.

conjunction with section 411.083 of the Government Code. The district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office may withhold Attachment J under section 552.108(a)(4) of the Government Code. To the extent the information we have marked does not belong to the requestor's client, the district attorney's office must withhold such information under section 552.130 of the Government Code. The remaining information must be released.<sup>6</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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 522801

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>6</sup>We note the requestor has a special right of access to some of the information being released. See Gov't Code § 552.023(a). Because such information is confidential with respect to the general public, if the district attorney's office receives another request for this information from a different requestor, the district attorney's office must again seek a ruling from this office.