



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2014

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2014-13210

Dear Mr. Trevino:

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# 530911 (Fort Worth Request No. W033971).

The City of Fort Worth (the "city") received a request for information pertaining to a named individual during a specified time period, including seven specified incident reports. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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. 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.

The instant request, in part, is for unspecified law enforcement records involving the named individual. Thus, we agree the portion of the request seeking unspecified law enforcement records requires the city to compile the named individual's criminal history and thereby implicates the named individual's privacy interests. However, you have only submitted information pertaining to the specified incident reports. Because the requestor specifically requests this information, it is not part of a compilation of the individual's criminal history that implicates the person's privacy. Thus, the city may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy. Accordingly, we will address your remaining arguments against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code. The relevant language of section 58.007 reads:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Fam. Code § 58.007(c), (e). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Report numbers 06-74076, 06-93201, 06-98354, and 06-138560 involve juveniles engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. We note although the requestor is a parent of one of the juvenile suspects listed in the report, the juvenile suspect is now an adult. Accordingly, the requestor no longer has a right of access to the information at issue pursuant to section 58.007(e). *See id.* § 58.007(e). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Therefore, report numbers 06-74076, 06-93201, 06-98354, and 06-138560 are confidential under section 58.007(c) of the Family Code and must be withheld in their entireties under section 552.101 of the Government Code.

Portions of the remaining information are protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Additionally, this office has concluded 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*. Therefore, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

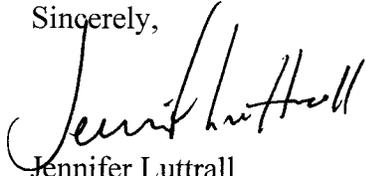
In summary, the city must withhold report numbers 06-74076, 06-93201, 06-98354, and 06-138560 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.¹

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.

¹We note the remaining information 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. *See Gov’t Code* § 552.147(b).

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 530911

Enc. Submitted documents

c: Requestor
(w/o enclosures)