



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2015

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2015-11836

Dear Mr. Grove:

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# 567165.

Fort Bend County (the "county") received a request for information pertaining to a specified arrest. You claim the requested 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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. However, this request does not seek a compilation of an individual's criminal history; rather, the request is for information pertaining to a specified arrest. Such a request does not implicate an individual's common-law right to privacy. Accordingly, the county may not withhold any of the submitted information as criminal history compilation under section 552.101 in conjunction with common-law privacy.

We note the submitted information includes court-filed documents that are subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). You assert this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. We note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As such, you may not withhold the information that is subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. However, sections 58.007 and 58.00711 of the Family Code and sections 411.083 and 560.002 of the Government Code make information confidential for the purposes of section 552.022. Therefore, we will consider your arguments under these sections for the information subject to section 552.022. We will also consider your argument under section 552.101 of the Government Code in conjunction with common-law privacy for the information that is not subject to section 552.022.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 provides, in pertinent part, 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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See id.* § 51.02(2). The submitted information involves allegations of delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. However, we are unable to determine the age of the alleged offender. Accordingly, we must rule conditionally. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Thus, to the extent the offender was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the information at issue is confidential under section 58.007(c) and must be withheld under section 552.101.¹ However, to the extent the offender was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the information at issue is not confidential pursuant to section 58.007(c) and it may not be withheld under section 552.101 on that basis. In that instance, we will consider your remaining arguments.

In the event the offender was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, we address your argument under section 58.00711 of the Family Code. Section 552.101 of the Government Code also encompasses section 58.00711 of the Family Code. Section 58.00711 addresses the confidentiality of records relating to juveniles charged with fine-only misdemeanors. The Eighty-third Texas Legislature adopted the two following bills amending section 58.00711: Senate Bill 394 and House Bill 528. *See* Act of May 22, 2013, 83rd Leg., R.S., ch. 1257, § 4, 2013 Tex. Gen. Laws 3180-81 (House Bill 528); Act of May 16, 2013, 83rd Leg., R.S., ch. 1319, § 3, 2013 Tex. Gen. Laws 3500-01 (Senate Bill 394). As a result, there are currently two versions of section 58.00711 of the Family Code. As amended by Senate Bill 394, section 58.00711 provides the following:

(a) This section applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(b) Except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for an offense described by Subsection (a) are confidential and may not be disclosed to the public.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Fam. Code § 58.00711. As amended by House Bill 528, section 58.00711 provides the following:

Except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public.

Id. In Attorney General Opinion GA-1035, our office addressed the question of how to reconcile the two versions, and found “[a] *court* . . . may simultaneously comply with the amendments of both the Senate Bills and the House Bill. Therefore, . . . the Senate Bills and the House Bill do not irreconcilably conflict.” Attorney General Opinion GA-1035 at 3 (2014) (emphasis added). For purposes of section 58.00711, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See id.* § 51.02(2). You argue the information at issue is confidential pursuant to section 58.00711 of the Family Code. However, the information at issue does not involve an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue. Thus, the information at issue is not confidential pursuant to section 58.00711 and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses 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. *See 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. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. We further note section 411.083 does not apply to active warrant information or other information relating to one’s current

involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find the information we marked consists of CHRI the county must withhold under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated how any portion of the remaining information at issue consists of CHRI for purposes of chapter 411 of the Government Code, and the county may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the information at issue does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information in this instance. Therefore, the county must withhold the submitted fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code.²

You argue some of the remaining information at issue is confidential 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find none of the remaining information at issue is highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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.³ *See Gov't Code* § 552.130. Accordingly, the county must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

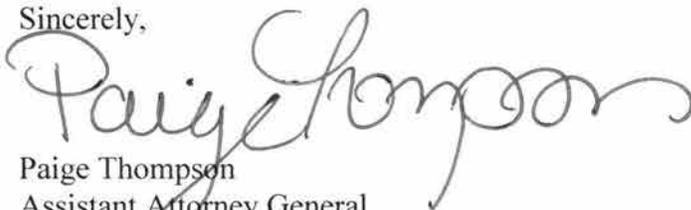
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision* Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the offender was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the information at issue is confidential under section 58.007(c) and must be withheld under section 552.101. To the extent the offender was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the county must withhold (1) the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code, (2) the submitted fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, and (3) the motor vehicle record information we marked under section 552.130 of the Government Code. The county must release the remaining information.⁴

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 567165

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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 requesting a decision from this office under the Act. Gov't Code § 552.147(b).