



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

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Ms. Julie Pandya Doshier  
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OR2017-00996

Dear Ms. Doshier:

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# 642027 (NJDHS # 81041).

The DeSoto Police Department (the "department"), which you represent, received a request for all 911 call sheets, incident reports, offense reports, and arrest records involving two specified addresses for a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136 of the Government Code. You indicate you will redact information pursuant to section 552.147(b) of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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 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

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<sup>1</sup>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).

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 contend the present request requires the department to compile unspecified law enforcement records concerning a named individual. We note, however, the requestor is seeking information related to specified addresses. Thus, we find this request does not require the department to compile any specific individual's criminal history and does not implicate the privacy interest of any individual. Accordingly, the department may not withhold any portion of the responsive information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007 provides, in relevant part, the following:

(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.

*Id.* Upon review, we find report numbers 2014-0170821, 2014-0294525, 2013-0289801, 2013-0230098, 16-005217, 14-006957, 13-001065, and 13-006575 involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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 when the conduct occurred), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for

supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, the department must withhold report numbers 2014-0294525, 2014-0170821, 2013-0289801, 2013-0230098, 16-005217, 14-006957, 13-001065, and 13-006575 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>2</sup> However, we find you have failed to demonstrate the remaining information you marked depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Therefore, we find that you have failed to demonstrate the applicability of section 58.007 to the remaining information, and it may not be withheld 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 part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

*Id.* § 261.201(a). We find some of the remaining information consists of information used or developed in investigations of alleged or suspected child abuse. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, we find report numbers 16-003414, 14-004746, and 13-004012 are subject to chapter 261 of the Family Code. We have no indication the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude report numbers 16-003414, 14-004746, and 13-004012 are confidential pursuant to section 261.201 of the Family Code, and the department must withhold them under section 552.101 of the Government Code.<sup>3</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 2016-0143904 pertains to a pending criminal investigation or prosecution. Based upon this representation, we conclude that the release of this incident report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to incident report number 2016-0143904.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report numbers 2016-0114377, 2015-0027024, 14-003482, 15-000628, and 16-002694 pertain to closed criminal investigations that concluded in a result other than conviction or deferred adjudication. Thus, section 552.108(a)(2) is applicable to the information the department marked in incident report numbers 2016-0114377, 2015-0027024, 14-003482, 15-000628, and 16-002694.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold incident report number 2016-0143904 under section 552.108(a)(1) of the Government Code and the information it marked in incident report numbers 2016-0114377, 2015-0027024, 14-003482, 15-000628, and 16-002694 under section 552.108(a)(2) of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides that “an agency may not disclose personal information

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information” includes a person’s name, address, and driver identification number, but not the zip code, telephone number, and medical or disability information. *Id.* § 730.003(6). The Department of Public Safety (“DPS”) is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You state some of the remaining information was obtained by the department from DPS. *See id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, we find the department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

We note portions of the remaining information contain information subject to common-law privacy, which is encompassed by section 552.101 of the Government Code. The two-prong test for common-law privacy was discussed above. *See Indus. Found.*, 540 S.W.2d at 681-82. Types of information considered highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold all identifiable public citizens’ dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is not highly intimate or embarrassing and of no legitimate public concern. Therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 of the Government Code on that ground.

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. *See* Gov’t Code § 552.130(a). The department must withhold the motor vehicle record information it marked, and the additional information we marked, under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find you have not explained how any of the remaining information consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a),

.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find the department has failed to demonstrate the applicability of section 552.136 of the Government Code to the remaining information it marked and the department may not withhold it on this ground.

In summary, the department must withhold report numbers 2014-0170821, 2014-0294525, 2013-0289801, 2013-0230098, 16-005217, 14-006957, 13-001065, and 13-006575 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold report numbers 16-003414, 14-004746, and 13-004012 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold incident report number 2016-0143904 under section 552.108(a)(1) of the Government Code and the information it marked in incident report numbers 2016-0114377, 2015-0027024, 14-003482, 15-000628, and 16-002694 under section 552.108(a)(2) of the Government Code. The department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The department must withhold all identifiable public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information it marked, and the additional information we marked, under section 552.130 of the Government Code. The remaining information must be released.

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,



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Assistant Attorney General  
Open Records Division

KAH/eb

Ref: ID# 642027

Enc. Submitted documents

c: Requestor  
(w/o enclosures)