



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2017

Mr. Robert G. Schleier, Jr.
Counsel for the City of Kilgore
Law Office of Robert G. Schleier, Jr.
116 North Kilgore Street
Kilgore, Texas 75662

OR2017-09415

Dear Mr. Schleier, Jr.:

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# 656180.

The Kilgore Police Department (the "department") received a request for the employment applications of a specified category of employees during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, and 552.147 of the Government Code.¹ 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

¹Although you do not raise section 552.117 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments.

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 claim the present request requires the department to compile unspecified law enforcement records. However, upon review of the request, we find the requestor is seeking the employment applications of individuals within a specified job category. Thus, this request does not implicate any individuals' rights to privacy, and the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of any individual's criminal history.

Section 552.101 of the Government Code also encompasses information protected by other statutes. 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), "child" means 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). We note section 58.007(c) is only applicable to law enforcement records and files of a child. Upon review, we find the information you marked is personnel information that does not constitute juvenile law enforcement records for purposes of section 58.007(c). Accordingly, the department may not withhold the information at issue

under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service.² However, we find the remaining information you marked does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information of a peace officer. Thus, the remaining information you marked may not be withheld under section 552.117(a)(2).

Section 552.1175 of the Government Code provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

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

Gov't Code § 552.1175(a)(1), (b). The remaining information at issue relates to peace officers who are employed by other police departments. Accordingly, to the extent any of the officers at issue elect to restrict access to their marked information in accordance with section 552.1175(b), then with the exception of the information we marked for release, the department must withhold the information you marked that pertains to that officer under section 552.1175 of the Government Code. Conversely, if any of the officers at issue do not elect to restrict access to their information in accordance with section 552.1175(b), the marked information pertaining to that officer may not be withheld under section 552.1175. However, we find the remaining information you marked does not consist of the home address, home telephone number, emergency contact information, date of birth, social security number, or family member information of an individual to whom this section applies. Thus, the remaining information you marked may not be withheld under section 552.1175.

Section 552.101 of the Government Code encompasses the doctrine of 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. As also noted above, 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. Reporters Comm.*, 489 U.S. at 764. Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, we note criminal history information provided by a department officer as part of an application for employment with the department was not compiled by any governmental body. 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 marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any portion of the remaining information under section 552.101 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. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information you marked and we marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. To the extent any of the officers at issue elect to restrict access to their marked information in accordance with section 552.1175(b), then with the exception of the information we marked for release, the department must withhold the information you marked that pertains to that officer under section 552.1175 of the Government Code. The department must withhold 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 you marked and we marked under section 552.130 of the Government Code. The department must release the remaining 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/sb

Ref: ID# 656180

Enc. Submitted documents

c: Requestor
(w/o enclosures)

