



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2017

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2017-13913

Dear Ms. Aguilar:

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# 663664 (ORR# Spur6).

The Corpus Christi Police Department (the "department") received a request for all reports pertaining to a named individual. The department indicates it will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2016-00831 (2016).¹ The department also indicates it will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.² You state the department will release 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 from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹Open Records Letter No. 2016-00831 authorized the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

²Section 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. *See* 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).

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 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. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code § 411.082(2)(B)* (criminal history record information does not include driving record information). Further, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system).

The present request seeks all reports pertaining to a named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the department has submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Prior to its repeal by the Seventy-Fourth Legislature, former section 51.14 of the Family Code provided for the confidentiality of juvenile law enforcement records. *See Open Records Decision No. 181* (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before

January 1, 1996, are governed by former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14(d) (repealed 1995). A “child” is defined as a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find report number 94-037078 pertains to juvenile conduct that occurred prior to January 1, 1996. Further, the requestor does not fall within the categories in former section 51.14(d) under which inspection of the records would be permitted. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Therefore, we find former section 51.14(d) is applicable to report number 94-037078. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating a need for supervision engaged in by child). Thus, the department must withhold report number 94-037078 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.³

The department argues some of the remaining information is 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. Types of information considered intimate and 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, which we have 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 not demonstrated any of the remaining information it

³As our ruling is dispositive for this information, we need not address the department’s argument under section 58.007(c) of the Family Code against its disclosure.

marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 94-037078 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family 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 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 663664

Enc. Submitted documents

c: Requestor
(w/o enclosures)