



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 22, 2017

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2017-19134

Dear Mr. Kopp:

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# 672836 (ORR# W171286).

The City of San Antonio (the "city") received a request for information pertaining to seven specified cases involving a named individual. The city states it will release some of the requested information. We understand the city will redact public citizens' dates of birth pursuant to Open Records Letter No. 2016-08566 (2016).<sup>1</sup> The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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,

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<sup>1</sup>Open Records Letter No. 2016-08566 authorizes the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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). 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). Report number 97-565-466 involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Therefore, report number 97-565-466 is generally confidential under section 58.007(c).

However, we note the requestor is a representative from the Office of the Federal Public Defender for the District of Nevada (the "federal public defender's office") and states the federal public defender's office was appointed to represent the named individual in his legal proceedings. In this instance, the requestor argues he has a right of access to report number 97-656-466 pursuant to section 58.007(e) of the Family Code because the federal public defender's office "arguably . . . constitutes a 'criminal justice agency' for purposes of [section 58.007(e) of the Family Code]" and because he is the attorney for the named individual, who is a suspect listed in the report. As noted above, section 58.007(e) of the Family Code gives a "criminal justice agency as . . . defined by Section 411.082, Government Code" a right of access to juvenile law enforcement records. *Id.* § 58.007(e). Section 411.082 of the Government Code defines a "criminal justice agency" as including "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]" Gov't Code § 411.082(3)(A); *see also id.* § 411.082(1) ("Administration of criminal justice" has the meaning assigned by Article 60.01, Code of Criminal Procedure)). Section 1 of article 60.01 of the Code of Criminal Procedure provides, "'Administration of criminal justice' means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution,

adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Crim. Proc. Code art. 60.01 § 1. Upon review, we find the requestor has not demonstrated the federal public defender’s office is engaged in the administration of criminal justice for purposes of section 411.082 of the Government Code. Accordingly, the federal public defender’s office is not a criminal justice agency for purposes of section 58.007(e) of the Family Code. We further note the requestor’s client was an adult at the time of the conduct at issue. Therefore, upon review, we find this requestor does not have a right of access to the information under section 58.007(e) of the Family Code. *Id.* § 58.007(e). Accordingly, the city must withhold report number 97-565-466 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-Fourth Legislature, former section 51.14(d) provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. *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). Section 51.14(d) 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 95-331509 pertains to juvenile conduct that occurred prior to January 1, 1996, and involves suspects who were ten years of age or older and under seventeen years of age at the time of the offense. 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)). Therefore, we find

former section 51.14(d) is applicable to report number 95-331509. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating a need for supervision engaged in by child). Accordingly, the city must withhold report number 95-331509 under section 552.101 of the Government Code in conjunction with former section 51.14(d).

Section 552.101 of the Government Code also 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which 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 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. 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 city must withhold 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 not of legitimate public concern, or the requestor, as the legal representative of the individual whose privacy interest is at issue, has a right of access to the information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

The city seeks to withhold some of the remaining information pursuant to section 552.1085 of the Government Code. Section 552.1085 provides, in pertinent part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This

section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

(d) Notwithstanding Subsection (c) and subject to Subsection (e), the following persons may view or copy information that constitutes a sensitive crime scene image from a governmental body:

...

(7) an agency of the federal government[.]

Gov't Code § 552.1085(c), (d)(7). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). The city states the submitted photographs and video recording consist of sensitive crime scene images that were taken at a crime scene as part of a criminal case that is now closed. Upon review, we agree some of the information at issue consists of sensitive crime scene images for the purposes of section 552.1085. However, as noted above, the requestor states he is an attorney with the federal public defender's office. The requestor further informs this office the federal public defender's office is a federal agency within the judicial branch of the United States Government. Thus, upon review, we find the requestor is a representative of an agency of the federal government. Accordingly, the requestor has a right to view or copy the images at issue pursuant to section 552.1085(d)(7) of the Government Code. *See id.* § 552.1085(d)(7). Further, we find none of the remaining information consists of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the city may not withhold any of the remaining information under section 552.1085(c) of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 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 city must withhold the motor vehicle record information we marked within the remaining documents under section 552.130 of the Government Code. The city must also withhold any discernible motor vehicle record information from the remainder of the video recording, as well as all discernible motor vehicle record information from the photographs we noted, under section 552.130 of the Government Code.

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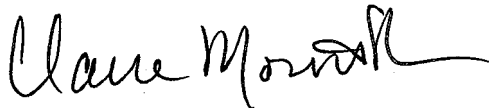
<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the city must withhold report number 95-331509 under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code and must withhold report number 97-656-466 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 marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked in the remaining documents, any discernible motor vehicle record information from the remainder of the video recording, and all discernible motor vehicle record information from the photographs we noted under section 552.130 of the Government Code. The city must release the remaining information to this requestor.<sup>3</sup>

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bw

Ref: ID# 672836

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>The requestor has a right of access to some of the information being released. See Gov't Code §§ 552.023(a), .1085(d)(7); ORD 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.