



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 22, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2019-29696

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# 792447 (Ref. No. W274053).

The City of San Antonio (the "city") received a request for all records involving the requestor or a named individual.¹ You claim some of the submitted information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which

¹ You state, and provide documentation demonstrating, the city sought and received clarification of the information requested. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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.

The present request requires the city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Accordingly, to the extent the city maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 58.008(b) of the Family Code, which provides:

Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, § 4 (to be codified at Fam. Code § 58.008(b)); *see also* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Section 58.008(b) applies to records of juvenile conduct that occurred before, on, or after September

1, 2017. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 1.02(2) (defining “child” for purposes of title 3 of Family Code). You assert some of the information at issue is subject to section 58.008(b) of the Family Code. Upon review, we agree the information at issue involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.218 of the Health and Safety Code is applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). This section makes confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. *See* Health and Safety Code § 772.204. You state the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code. Accordingly, the city must withhold the telephone number you marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if it was furnished by a 9-1-1 service provider. Conversely, if the marked information does not consist of the originating telephone number provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.218.

In summary, to the extent the city maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The city must withhold the telephone number you marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if it was furnished by a 9-1-1 service provider. The city 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Blake Brennan', written in a cursive style.

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 792447

Enc. Submitted documents

c: Requestor
(w/o enclosures)