



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2007

Ms. Patricia Carls
Brown & Carls
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2007-12690

Dear Ms. Carls:

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# 290706.

The City of Georgetown (the "city"), which you represent, received a request for all police reports regarding four named individuals, including the requestor. You claim that the requested 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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 demonstrated. *Id.* at 681-82. 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) (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 that 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 private and may not be withheld under section 552.101 on that basis.

In this instance, the requestor seeks records pertaining to herself and three named individuals. The requestor is the parent of two of the named minors. We note that the requestor has a special right of access under section 552.023 of the Government Code to information that is excepted from public disclosure under laws intended to protect her and her children's privacy interests. *See* Gov't Code § 552.023. However, the requestor does not have a special right of access to information that implicates the other named individual's privacy interest. Therefore, 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 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 section 261.201(a) of the Family Code, which provides as follows:

(a) The 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You indicate that the submitted reports were developed in an investigation of suspected child abuse or neglect. Based on this representation and our review of the submitted documents, we find that some of the submitted information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(4)(a) (definition of "neglect" includes "leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm"). You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given this assumption, we conclude that some of the submitted police reports, which we have marked, are confidential pursuant to section 261.201 of the Family Code and must therefore be withheld in their entirety pursuant to section 552.101 of

the Government Code.¹ None of the remaining police reports may be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we note that some of the submitted information is subject to section 552.130 of the Government Code.² Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

Finally, we note that some of the submitted information is subject to section 552.136 of the Government Code. Section 552.136(b) states that "[n]otwithstanding any other provision of this chapter, 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." Accordingly, the city must withhold the account number we have marked under section 552.136.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such

¹We note that the requestor is the parent of the children who are the subject of the alleged abuse or neglect, and she may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Fam. Code § 261.201(g).

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

³We note that the submitted information includes the requestor's motor vehicle record information. Although the city would be required to withhold that information from the public under section 552.130, the requestor has a right of access to her own Texas motor vehicle record information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the city receive another request for these same records from a person who would not have a right of access to the requestor's Texas motor vehicle record information, the city should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the submitted police reports we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must also withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code and the account number we have marked under section 552.136 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

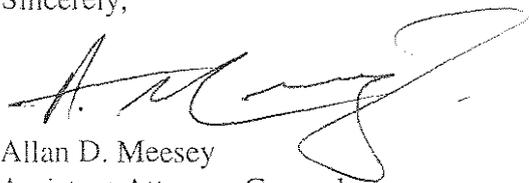
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Meesey', written over a horizontal line.

Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 290706

Enc. Submitted documents

c: Ms. Cathleen Forbes DeLeon
1003 Garden View Drive
Georgetown, Texas 78628
(w/o enclosures)