



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2008

Mr. John Ohnemiller  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2008-11680

Dear Mr. Ohnemiller:

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# 319782.

The Midland Police Department (the "department") received a request for police reports regarding three specified incidents. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is not responsive to the instant request. The requestor seeks police reports from three specified incidents. We note that Exhibit C is not responsive to any of the specified incidents. The department need not release nonresponsive information in response to this request, and this ruling will not address that information. Therefore, we do not address your arguments against disclosure for Exhibit C.

Next, we note that you have not submitted information responsive to one of the requested incidents. Further, you have not indicated that you have released or will release other responsive information to the requestor. We assume that, to the extent any additional responsive information existed when the department received the request for information, the department has released it to the requestor. If not, then the department must do so

immediately. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

We now turn to your arguments against disclosure of the responsive 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. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has held that the 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 that the compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You argue that Exhibit B is subject to common-law privacy because the requestor seeks "all information concerning a certain person." However, the instant request seeks police reports pertaining to specified incidents; it does not require the department to compile any individual's criminal history. Therefore, Exhibit B is not part of a compilation and may not be withheld under section 552.101 in conjunction with common-law privacy on that basis.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides in pertinent part:

(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, audiotapes, videotapes, 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). Because the submitted information was used or developed in an investigation into alleged child abuse, the information is within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261), 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes); Penal Code § 22.011(c) (defining “child” for purposes of statutory rape as a person under 17 years of age who is not the spouse of the actor). You have not indicated that the department has adopted a rule governing the release of this type of information, and we therefore assume that no such rule exists. Given this assumption, we conclude that Exhibit B is confidential in its entirety pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law.<sup>1</sup>

In summary, the department need not release nonresponsive information in response to this request. The department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

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<sup>1</sup>We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child’s parent, managing conservator, or other legal representative may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 challenge 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,



Katherine M. Kroll  
Assistant Attorney General  
Open Records Division

KMK/eeg

Ref: ID# 319782

Enc. Submitted documents