



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2008

Ms. Marianna M. McGowan  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2008-14487

Dear Ms. McGowan:

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# 326170.

The Frisco Police Department (the "department"), which you represent, received a request for information related to two named individuals and two specified addresses. 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.

Initially, we note that the requestor, in the request for information, excluded from the request driver's license and license plate numbers and expiration dates, VINs, and social security numbers. Thus, any of this information within the submitted documents is not responsive to the present request. Accordingly, we do not address this information and it need 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." Gov't Code § 552.101. Section 552.101 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). 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

record information 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor asks for unspecified records pertaining to two named individuals. This request implicates such individuals' right to privacy. However, we note that the requestor has submitted signed release forms from both of the individuals named in the request. Thus, the requestor is the authorized representative of these individuals, and, as such, has a special right of access to these individuals' private information. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, to the extent the department maintains law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant, the information is not private in this instance, and the department may not withhold such information under section 552.101 of the Government Code. Furthermore, you have submitted information that does not list either named individual as a suspect, arrestee, or criminal defendant, and is therefore not part of a compilation of either individual's criminal history. Thus, that information is also not private, and the department may not withhold it under section 552.101 on that basis. Therefore, we will address your remaining arguments against disclosure of the submitted information.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code 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, 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). Upon review, we find that some of the information at issue consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. Thus, this information is within the

scope of section 261.201 of the Family Code. 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. However, section 261.201 also provides that information encompassed by subsection (a) may be released to certain persons and entities under limited circumstances. *See id.* § 261.201.

We note that the department received the request for information from Court Appointed Special Advocates of Denton County, Inc. (“CASA”). The requestor does not fall within any category of persons or entities under section 261.201 that are authorized to receive this ordinarily confidential information. *See id.* § 261.201(b)-(g) (listing entities that are authorized to receive 261.201 information).

Furthermore, the submitted court order does not give CASA, as guardian ad litem, a right of access to the information at issue. The order appointing CASA as guardian ad litem provides that the “Texas Department of Protective and Regulatory Services Child Protective Services Division [the “DFPS”] is ORDERED to release copies of the children’s information” to CASA, and also gives CASA access “to any protected health information concerning the . . . children[.]” The information at issue is not held by DFPS, nor does it contain any protected health information of the children at issue. Accordingly, the information that we have marked is confidential under section 261.201(a) of the Family Code and, thus, is excepted from disclosure pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor to section 261.201).<sup>1</sup> The remaining submitted information is not protected under section 261.201; therefore, the department may not withhold it under section 552.101 on that basis. As you raise no other exception to disclosure, the remaining information must be released to the requestor.<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

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<sup>1</sup>We note that if the investigation has been referred to the DFPS, a parent or other legal representative of a child who is a requestor may be entitled to access to the DFPS’s records. *See* Fam. Code § 261.201(g).

<sup>2</sup>Some of the documents marked for release contain or consist of confidential information that is not subject to release to the general public. *See* Gov’t Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov’t Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the individuals whose information is at issue or their authorized representative, the department should again seek our decision.

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).

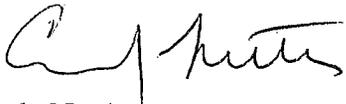
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 326170

Enc. Submitted documents

c: Ms. Sandi Moresco  
CASA of Denton County  
P.O. Box 2885  
Denton, Texas 76209  
(w/o enclosures)