



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2009

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
1400 South Lamar  
Dallas, Texas 75215

OR2009-00192

Dear Ms. McClellan:

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# 331555 (Dallas Request 2008-7170).

The Dallas Police Department (the "department") received a request for five specified police reports. You claim that the submitted reports are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted reports.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 552.101 of the Government Code encompasses section 261.201(a) of the Family Code, which provides as follows:

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). You claim that report numbers 0301747-V and 0301746-V were used or developed in an investigation of child abuse under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 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). Based on your representations and our review, we agree that report number 0301747-V is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, report number 0301747-V is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup> However, because report number 0301746-V involves an assault on an adult and does not involve child abuse or neglect, report number 0301746-V is not confidential under section 261.201 and may not be withheld under section 552.101 on this basis.

Next, you claim that the remaining reports are excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that report numbers 0301746-V, 0800524-N, 0801130-N, 0221433-N and 0898229-M relate to pending prosecutions. Based on your representations and our review of the information at issue, we conclude that the release of report numbers 0301746-V, 0800524-N, and 0801130-N would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to report numbers 0301746-V, 0800524-N, and 0801130-N.

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<sup>1</sup>We note that if the Texas Department of Family and Protective Services has created a file on this case, the child’s parent may have the statutory right to review these files. *See* Fam. Code § 261.201(g).

However, we note that report numbers 0221433-N and 0898229-M involve conduct that occurred on March 27, 2004 and November 25, 2003, respectively. The statute of limitations for the offenses described in report numbers 0221433-N and 0898229-M is two years. *See* Pen. Code § 22.01(b) (assault offenses under section 22.01(a) are class A misdemeanors); Crim. Proc. Code art. 12.02 (indictment for a misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward). Thus, the limitations period has passed in both cases. You have not informed this office that any criminal charges were filed within the limitations period in either case. Furthermore, you have not otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Thus, report numbers 0221433-N and 0898229-M may not be withheld under section 552.108(a)(1). As you raise no further arguments against the disclosure of report number 0898229-M, it must be released to the requestor.

We note and you acknowledge that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the department may withhold report numbers 0301746-V, 0800524-N, and 0801130-N under section 552.108(a)(1) of the Government Code.<sup>2</sup>

You contend that the information you have marked in report number 0221433-N is confidential pursuant to the doctrine of common-law privacy. Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Therefore, the department must withhold the criminal history record information you have marked in report number 0221433-N under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold report number 0301747-V under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining claim against the disclosure of portions of report numbers 0800524-N and 0801130-N.

exception of basic information, which must be released, the department may withhold report numbers 0301746-V, 0800524-N and 0801130-N under section 552.108(a)(1) of the Government Code.<sup>3</sup> The department must also withhold the information it has marked in report number 0221433-N under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining 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 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

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<sup>3</sup>We note that you have the discretion to release all or part of report numbers 0301746-V, 0800524-N, and 0801130-N that are not otherwise confidential by law. Gov't Code § 552.007.

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 cursive script that reads "Laura E. Ream".

Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 331555

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)