



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2010

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2010-02360

Dear Ms. Sandoval-Walker:

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# 370906.

The El Paso Police Department (the "department") received a request for all incident records for two named individuals for a specified time period. You claim that the submitted 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 common-law right of privacy, which protects information if it (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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the department to compile unspecified law enforcement records concerning the named individuals. Therefore, to the extent the department maintains law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

You have submitted information in which one of the named individuals is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation, and thus does not implicate the individual's right to privacy. Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, 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 the information we have marked was used or developed in an investigation into alleged child abuse under chapter 261. *See* Fam. Code § 261.001(1) (defining "abuse" for purposes of Family Code ch. 261); *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). As there is no indication that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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

any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 370906

Enc. Submitted documents

c: Requestor  
(w/o enclosures)