



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2010

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

OR2010-05994

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# 377164 (DPD Request Number 2010-1180).

The Dallas Police Department (the "department") received a request for police reports related to two named individuals. You claim that some of the submitted information is exempted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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.

In this instance, the requestor seeks access to police reports involving either of two named individuals. Thus, this request, in part, requires the department to compile unspecified law enforcement records concerning the named individuals. Such a request implicates the named individuals' right to privacy. We note that the requestor is the attorney of the first named individual. As such, the requestor has a right of access under section 552.023 of the Government Code to any information involving her client that would be excepted from public disclosure on privacy grounds.¹ See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). To the extent, however, that the department maintains law enforcement records depicting the second named individual who is not the requestor's client as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes, such as former section 51.14(d) of the Family Code.² Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. See Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 applies only to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. See Fam. Code § 51.02(2). In this instance, the incident report we have marked pertains to an investigation of juvenile delinquent conduct that occurred prior to January 1, 1996. See *id.* § 51.03 (defining "delinquent conduct"). Therefore, the incident report we have marked is confidential under former section 51.14(d) of the Family Code and must be withheld under section 552.101 of the Government Code. See *id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by a child).

¹Section 552.023 provides in part that "[a] person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

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

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). The incident report you have marked consists of information used or developed in an investigation under chapter 261; therefore, this report is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. 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). In this instance, the requestor is the attorney representing a parent of one of the child victims listed in the report. However, the report reflects this parent is suspected of having committed the alleged abuse. Accordingly, we conclude none of the exceptions in subsection (k) apply to this report. *See id.* § 261.201(k) (parental exception to section 261.201(a) inapplicable where parent alleged to have committed abuse/neglect at issue). You do not inform us, and we are not aware, that the department has adopted a rule that governs the release of this type of information; therefore, we assume no such rule exists. Given that assumption, we conclude the report you have marked is confidential pursuant to section 261.201 of the Family Code, and the

department must withhold the report in its entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). We note that section 552.130 protects personal privacy. As noted above, the requestor is the attorney for the individual whose privacy interests are implicated. Thus, the requestor has a right of access to her client's own motor vehicle record information and the department may not withhold that information from the requestor under section 552.130 of the Government Code. *See id.* § 552.023. We have marked Texas motor vehicle record information that does not belong to the requestor's client that must be withheld under section 552.130 of the Government Code.³

In summary, to the extent the department maintains law enforcement records depicting the second named individual who is not the requestor's client as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 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 former section 51.14(d) of the Family Code. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor.⁴

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.

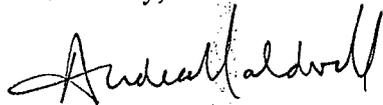
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note this requestor has a special right of access to some of the information being released that would otherwise be confidential with regard to the general public. *See* Gov't Code § 552.023(a). Accordingly, if the department receives another request for the same information, the department should again seek a ruling from this office.

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# 377164

Enc. Submitted documents

c: Requestor
(w/o enclosures)