



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2010

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi  
321 John Sartain  
Corpus Christi, Texas 75401

ATTORNEY GENERAL OF TEXAS

OR2010-09794

Dear Ms. Aguilar:

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# 385421.

The City of Corpus Christi (the "city") received a request for any and all investigative materials, including but not limited to incident reports, witness statements, photographs, and video/audio recordings, related to any incident involving a named individual. You state you have released some of the requested information. You claim that the remaining information is 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 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 doctrine of common-law 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

The present request requires the city to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted two reports, case numbers 06-010447 and 0912200079, that do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address your remaining arguments against the disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by statute. You raise section 552.101 in conjunction with section 261.201 of the Family Code for case number 06-010447. Section 261.201(a) 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). You represent to this office that the information at issue was used or developed in an investigation of alleged or suspected abuse of a child. Based upon your representation and our review, we agree that case number 06-010447 is within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for the 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). You have not indicated that the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such rule exists. Given this assumption,

we conclude that case number 06-010447 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 city must withhold case number 06-010447 under section 552.101 of the Government Code on this basis.

You raise section 552.108 of the Government Code as an exception to disclosure for portions of the information in case number 0912200079, which you have marked. 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 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 inform us case number 0912200079 relates to an inactive criminal case for which the statute of limitations has not run. Based upon this representation and our review, we conclude that release of the information you have marked in case number 0912200079 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). Accordingly, we conclude that the city may withhold the information you have marked in case number 0912200079 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold case number 06-010447 in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. The city may withhold the information you have marked in case number 0912200079 under section 552.108(a)(1) of the Government Code. The remaining information in case number 0912200079 must be released.

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,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/dls

Ref: ID# 385421

Enc. Submitted documents

c: Requestor  
(w/o enclosures)