



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2010

Mr. Joe Torres, III
Attorney for the City of Alice
216 North Boulevard, Suite 2
Alice, Texas 78332

OR2010-13679

Dear Mr. Torres:

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# 392880.

The City of Alice (the "city"), which you represent, received a request for information pertaining to three named individuals for a specified time period. You claim that the submitted 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 that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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 established. *Id.* at 681-82. 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) (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. 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.

In this instance, the request is for information pertaining to three named individuals. Thus, this request requires the city to compile the named individuals' criminal history. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted information pertaining to several incidents where the named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals as a compilation of their criminal histories and may not be withheld under section 552.101 in conjunction with common-law privacy on that basis. However, we will address your arguments against the disclosure of this information.

Section 552.101 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.

Fam. Code § 261.201(a). We note that report number 2009009283 pertains to an investigation by the city's police department of alleged or suspected child abuse and consists of a report used or developed in the investigation. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 22.11); *see also* Penal Code § 22.11(a) (defining "child" for purposes of Penal Code section 21.11 as person under 17 years of age). Thus, the information at issue falls within the scope of section 261.201 of the Family Code. You do not inform us, and we are not aware, that the city's police 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 report number 2009009283 is confidential pursuant to section 261.201 of the Family Code,

and the city must withhold it in its entirety under section 552.101 of the Government Code.¹ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We understand you to claim the remaining information is confidential pursuant to the doctrine of constitutional privacy. Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). You have failed to submit any arguments that explain how release of any portion of the remaining information would impair an individual's right to make certain kinds of decisions independently or would implicate an individual's interest in avoiding disclosure of personal matters. Accordingly, none of the information at issue may be withheld under section 552.101 in conjunction with constitutional privacy.

You also raise section 552.108 of the Government Code for the remaining information. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
- (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

¹As our ruling is dispositive for this information, we need not address your argument against its disclosure.

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). Although you generally assert the remaining information is excepted under section 552.108, you have not specified the subsection of section 552.108 that applies to the information, nor have you submitted any specific arguments explaining how section 552.108 applies to the information. *See* Gov't Code § 552.301(e)(1)(A) (stating it is governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released). Consequently, you have failed to establish the applicability of section 552.108 of the Government Code to the remaining information, and the city may not withhold any information on that basis.

We note that some of the remaining information is subject to section 552.101 in conjunction with common-law privacy. We discussed the two-prong test for common-law privacy earlier in this ruling. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *Indus.*

Found., 540 S.W.2d at 683. Upon review, we find the information we have marked is intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information we have marked in the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy. The city must withhold report number 2009009283 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and the information we marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to its disclosure, the remaining information 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, 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 392880

Enc. Submitted documents

c: Requestor
(w/o enclosures)