



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 1, 2010

Ms. Maria Angela Flores Beck  
City Attorney  
City of La Grange  
155 East Colorado  
La Grange, Texas 78945

OR2010-18005

Dear Ms. Beck:

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# 401455.

The City of La Grange (the "city") received a request for information pertaining to four named individuals, including the requestor's client. You state the city does not have any information about one of the named individuals.<sup>1</sup> You state the city has released some of the requested information, but claim 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.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>We note the information being released contains a social security number of an individual other than the requestor's client. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 satisfied. *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) (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). Furthermore, we find 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 four named individuals named in the request, thus implicating the named individuals' rights to privacy. As noted above, you inform us the city does not have any information responsive to one of the named individuals. We also note the requestor has a right of access to her client's information pursuant to section 552.023 of the Government Code.<sup>3</sup> However, to the extent the city maintains any remaining law enforcement records depicting either of the other two named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy.<sup>4</sup> We note pages 6 through 10 of the submitted documents do not list either of the other two named individuals as a suspect, arrestee, or criminal defendant; therefore, this information is not confidential under common-law privacy, and we will address your arguments to withhold it.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part the following:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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

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<sup>3</sup>See Gov't Code § 552.023(a) ("a person or a 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."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

<sup>4</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

(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). Pages 6 through 10 of the submitted information consist of a neglect report prepared by the Texas Department of Family and Protective Services. You assert this information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining "neglect" for purposes of chapter 261.201 of Family Code). Upon review, we find this information is within the scope of section 261.201 of the Family Code. Accordingly, the city must withhold pages 6 through 10 under section 552.101 in conjunction with section 261.201 of the Family Code.<sup>5</sup> *See* Open Records Decision No. 440 at 2 (1986).

To conclude, the city must withhold any law enforcement records depicting any of the named individuals, other than the requestor's client, as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy. The city must withhold pages 6 through 10 of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tf

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<sup>5</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

Ref: ID# 401455

Enc. Submitted documents

c: Requestor  
(w/o enclosures)