



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
El Paso City Prosecutor's Office
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2010-18692

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# 402804 (ORR# 2010-10-04-AG).

The El Paso Police Department (the "department") received a request for three specified incident reports. You state you have released two of the requested reports. We understand you have redacted a Texas license plate number under section 552.130 of the Government Code pursuant to the previous determination issued all governmental bodies in Open Records Decision No. 684 (2009).¹ We understand you have also redacted social security numbers pursuant to section 552.147 of the Government Code.² You claim 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.

¹We 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 a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²Section 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. See Gov't Code § 552.147(b).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code 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 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 assert the submitted information is made confidential by section 261.201. We note the submitted information pertains to interference with child custody. Furthermore, you have not demonstrated how the submitted information was otherwise used or developed by the department in an investigation under chapter 261. *See id.* § 261.201(a); *see also id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), § 101.003(a) (defining "child" for purposes of the Family Code). Accordingly, we conclude the submitted information is not confidential in its entirety under section 261.201(a)(2) of the Family Code and it may not be withheld under section 552.101 of the Government Code on that basis. However, we note a portion of the report, which we have marked, pertains to reports of alleged or suspected child abuse or neglect. *See id.* § 261.201(a)(1). Accordingly, the information we have marked is within the scope of section 261.201(a)(1) of the Family Code. You do not indicate the department has adopted a rule that governs the release of information encompassed by section 261.201(a). Therefore, we assume no such rule exists. Given that assumption, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).*

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to

a reasonable person. *Cf. United States 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find a portion of the submitted information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a)(1) of the Family Code and common-law privacy. 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 402804

Enc. Submitted documents

c: Requestor
(w/o enclosures)