



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 11, 2011

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2011-00544

Dear Ms. Middlebrooks:

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# 405615 (DPD Public Information Request # 2010-9721).

The Dallas Police Department (the "department") received a request for information related to case numbers 291382X, 292478X, and 292479X. You claim that the information you have marked in the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 information protected by other statutes, such as section 261.201 of the Family Code.<sup>2</sup> Section 261.201 provides, in relevant part:

(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

(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 [Texas Department of Family and Protective Services] 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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

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

(A) the child who is the subject of the report;  
or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). Upon review, we find that a portion of the submitted information was developed in an investigation of alleged injury to a child. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Therefore, we conclude that this information is generally confidential under section 261.201(a) of the Family Code.

However, the requestor is the parent of the child who is the subject of the report, and the parent is not alleged to have committed the suspected abuse. Thus, the department may not use section 261.201(a) to withhold the requested information from this requestor. *Id.* § 261.201(k). However, section 261.201(l) requires that the identity of the reporting party be redacted before a parent may inspect the record. *Id.* § 261.201(l)(3). Thus, the department must withhold the reporting party’s identity under section 552.101 of the Government Code in conjunction with section 261.203(l)(3). In addition, section 261.201 provides that any information otherwise excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). You have marked information to be withheld under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. Accordingly, we will consider these arguments against disclosure.

Section 552.101 of the Government Code also encompasses the common-law right to 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 met. *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, noting 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. This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, we note that section 552.023 of the Government Code gives a person a special right of access to information that is otherwise excepted from public disclosure under laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Upon review, we find that the information we have marked is highly intimate or embarrassing information of no legitimate public concern. Therefore, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information at issue relates to the requestor. In this case the requestor has a special right of access under section 552.023 to her own information, and the department may not withhold the remaining information at issue under section 552.101.

Section 552.108(a)(1) 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 [required public disclosure] if:

(1) 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested records pertain to pending criminal prosecutions. Based on your representation and our review, we agree that release of the information you have marked 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) (specifying law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a). Upon review, we agree that the department must withhold the Texas motor vehicle record information we have marked under section 552.130.<sup>3</sup> However, the remaining information you have marked under this section relates to the requestor. Because section 552.130 protects personal privacy, the requestor has a special right of access under section 552.023 to her own information, and the department may not withhold that information under section 552.130.

Finally, you have marked social security numbers to be withheld under section 552.147. This section provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Therefore, you may withhold the social security numbers in the submitted information under section 552.147.<sup>4</sup>

In summary, the department must withhold the identity of the reporting party under section 552.101 in conjunction with section 261.201 of the Family Code. The department may withhold the information marked by you under sections 552.108 and 552.147. The department must withhold the information marked by us under (1) section 552.101 in conjunction with common-law privacy, and (2) section 552.130. The remaining information must be released.<sup>5</sup>

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

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<sup>3</sup>We note that Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>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.

<sup>5</sup>As noted, the requestor in this situation has special rights of access under section 261.201 of the Family Code and section 552.023 of the Government Code to the information being released. However, should the department receive another request for this information from an individual other than one with those rights of access, the department should again request a decision from this office.

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 "Misty Haberer Barham".

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID# 405615

Enc. Submitted documents

c: Requestor  
(w/o enclosures)