ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2011

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2011-01913

Dear Mr. Phillips:

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# 408427 (Fort Worth PIR No. W005070).

The City of Fort Worth (the "city") received a request for police incident report number 10-110607 and all police incident reports involving the requestor's client and a named individual during a specified time period. You state you will release some information to the requestor. You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007), and social security numbers under section 552.147(b) of the Government Code. *See* Open Records Decision No. 673 at 7-8 (2001) (previous determinations); Gov't Code § 552.147(b). You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 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). 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, in part, requires the city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the individual's right to privacy. However, we find the part of the request seeking incident report number 10-110607 does not implicate the named individual's privacy interests because this part of the request seeks a specified report. Therefore, the city may not withhold information relating to incident report number 10-110607 under common-law privacy as part of the named individual's compiled criminal history. However, to the extent the city maintains law enforcement records that depict the named individual as a suspect, arrestee, or criminal defendant, it must withhold any such information under section 552.101 in conjunction with common-law privacy. We further note you have submitted report number 09-115265, which does not list the individual as a suspect, arrestee, or criminal defendant. This information therefore does not implicate the individual's right to privacy, and it may not be withheld as a compilation of criminal history.

Section 552.101 also encompasses information protected by other statutes, such as 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 [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:
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> > (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 [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:
>
> . . .
>
> (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Upon review, we agree incident report number 10-110607 was used or developed in an investigation of alleged child abuse or neglect. *See* Fam. Code § 261.001(1)(E) definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Thus, we find the information relating to incident report number 10-110607 falls within the scope of section 261.201 of the Family Code. However, the requestor is an attorney representing a parent of the child victim listed in the submitted information, and the parent is not alleged to have committed the suspected abuse. Thus, in this instance, the city may not use section 261.201(a) to withhold the submitted information from this requestor. Fam. Code § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Therefore, the city must withhold the information we have marked in incident report number 10-110607 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The city must release the remaining information relating to incident report number 10-110607 to this requestor.

Section 552.108(a)(1) of the Government Code 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). Generally, 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 state, and provide an affidavit from the Fort Worth Police Department stating, incident report number 09-115265 relates to an open criminal investigation and its release would interfere with that investigation. Based on these representations and our review, we conclude the release of report number 09-115265 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex 1976). Thus, section 552.108(a)(1) is applicable to incident report number 09-115265.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold incident report number 09-115265 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the city maintains law enforcement records other than those pertaining to incident report number 10-110607 that depict the named individual as a suspect, arrestee, or criminal defendant, it must withhold any such information under section 552.101 in conjunction with common-law privacy. The city must withhold the information we have marked in incident report number 10-110607 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. With the exception of basic information, the city may withhold incident report number 09-115265 under section 552.108(a)(1) of the Government Code. The city must release the remaining information to this requestor.[1]

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,

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

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[1]Because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201 of the Family Code, the city must again seek a decision from this office if it receives another request for the same information from a different requestor. *See* Fam. Code § 261.201(k).

Ref: ID# 408427

Enc. Submitted documents

c: Requestor
(w/o enclosures)