



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2011

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
PO Box 2570
Waco, Texas 76702-2570

OR2011-01924

Dear Ms. Benton:

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# 408486 (Waco Ref. # LGL-10-1671).

The Waco Police Department (the "department") received a request for all arrest forms, police reports, and any other records regarding a named person. You indicate you have provided some information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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. This section 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.

However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. We also note that information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. Cf. Gov't Code § 411.082(2)(B).

In this instance, the requestor asks the department for "[a]ny records regarding" a named individual, thus implicating such individual's right to privacy. Therefore, to the extent the department maintains any law enforcement records in which the named individual is a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that you have submitted records in which the named individual is not a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the individual's criminal history, and may not be withheld under section 552.101 on this basis. Accordingly, we address your remaining arguments against disclosure of this information.

Exhibit 9 consists of a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.062 (accident report). Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065. Section 550.065(c)(4) of the Transportation Code requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). In this instance, the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

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

- (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 state that Exhibits 6, 6A, 7, and 7A consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 21.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as a person under 17 years of age). Upon review, we find that Exhibits 6 and 6A do not pertain to an investigation of child abuse for the purposes of chapter 261 of the Family Code. Accordingly, section 261.201 does not apply to these records, and they may not be withheld on that basis. We find, however, that Exhibits 7 and 7A are within the scope of section 261.201. You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that Exhibits 7 and 7A are confidential pursuant to section 261.201 of the Family Code, and the department must withhold them in their entirety under section 552.101 of the Government Code.

Section 552.101, in conjunction with common-law privacy, also protects the identity of sexual assault victims. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Record Decision Nos. 393 at 2 (1983), 339 (1982), 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

Exhibits 6 and 6A relate to an alleged sexual assault. In this instance, the request indicates the requestor knows the identity of the alleged victim. Therefore, withholding only identifying information from the requestor would not preserve the victim’s common-law right to privacy. Accordingly, to protect the victim’s privacy, the department must withhold Exhibits 6 and 6A in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code 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:

....
(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.

Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that Exhibit 8 pertains to an investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we find that the information you have marked in Exhibit 8 may be withheld under section 552.108(a)(2).

Finally, you have also marked information in Exhibit 8 to be withheld under section 552.130. 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). Therefore, we agree that the department must withhold the information you have marked in Exhibit 8 under section 552.130.¹

In summary, the department must withhold (1) to the extent they exist, any records in which the named person is the suspect, arrestee or defendant, under section 552.101 in conjunction with common-law privacy, (2) the CR-3 report in Exhibit 9 under section 552.101 in conjunction with section 550.065 of the Transportation Code, (3) Exhibits 7 and 7A under section 552.101 in conjunction with section 261.201 of the Family Code, (4) Exhibits 6 and 6A under section 552.101 in conjunction with common-law privacy, and (5) the information in Exhibit 8 you have marked under section 552.130.² The department may withhold the information you have marked in Exhibit 8 under section 552.108. The remaining information must be released.

¹We note that Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies that authorizes the withholding of ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

² Because our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 408486

Enc. Submitted documents

c: Requestor
(w/o enclosures)