



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2011

Mr. Mark G. Mann  
Assistant District Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2011-02788

Dear Mr. Mann:

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# 409916 (GCA 10-0967).

The Garland Police Department (the "department") received a request for records relating to a named individual, including records pertaining to a specified case. 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.

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 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 established. *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, in part, requires the department to compile unspecified records concerning the individual at issue. 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 records pertaining to a specified case does not implicate the named individual's privacy interests because this part of the request seeks specific information. Therefore, the department may not withhold the information relating to the specified case under common-law privacy as part of the named individual's compiled criminal history. However, to the extent the department maintains other law enforcement records depicting 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.

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:

- (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). Upon review, we find the information pertaining to the specified case 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 this information falls within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the

information pertaining to the specified case in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup>

In summary, other than records pertaining to the specified case, to the extent the department maintains law enforcement records depicting 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 department must withhold the information pertaining to the specified case in its entirety 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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 409916

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.