



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 17, 2011

Mr. Joe D. Morris
City Attorney
City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479-0110

OR2011-03720

Dear Mr. Morris:

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# 411498.

The Sugar Land Police Department (the "department") received a request for all reports involving a named individual for a specified time period.¹ We note you have redacted Texas driver's license numbers under section 552.130 of the Government Code in accordance with Open Records Decision No. 684 (2009).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.

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

¹You inform us the requestor clarified his request. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

²This office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

(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 requires the department 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. To the extent the department 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 note, however, you have submitted information 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 under section 552.101 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:

(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:

...

(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)(2)-(3). Upon review, we find incident report 07-4172 and incident report 10-5831 were used or developed in investigations of alleged child abuse or neglect. *See id.* § 261.001(1)(4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find the information relating to incident report 07-4172 and incident report 10-5831 falls within the scope of section 261.201 of the Family Code. However, the requestor is a parent of the child victim listed in the reports at issue and is not alleged to have committed the suspected abuse. Thus, in this instance, the department may not use section 261.201(a) to withhold incident reports 07-4172 and 10-5831 from this requestor. *Id.* § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). We have marked the information identifying the reporting party that must be withheld under section 261.201(l)(3) of the Family Code. In addition, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2).

You have redacted social security numbers in the remaining information under section 552.147 of the Government Code. Section 552.147 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. *See id.* § 552.147(b). We note, however, that section 552.147 protects personal privacy. In this instance, the requestor is a parent of the minor child whose social security number is at issue. Thus, the requestor has a right of access to his child’s social security number under section 552.023 of the Government Code, and this information may not be withheld from them in this instance. *See id.* § 552.023(a) (“a person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, the department may not withhold the requestor’s child’s social security number, which we have marked for release, from this requestor under section 552.147 of the Government Code. The department may withhold the remaining social security number in the submitted information under section 552.147.

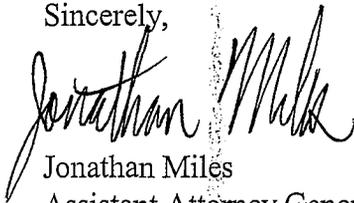
In summary, to the extent the department maintains law enforcement records that depict the named individual as a suspect, arrestee, or criminal defendant, it must withhold any such information under section 552.101 in conjunction with common-law privacy. The

department must withhold the information we have marked identifying the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of the requestor's child's social security number, which we have marked for release, the department may withhold the social security number you have marked under section 552.147 of the Government Code. The remaining information must be released.³

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 411498

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains confidential information to which the requestor has a right of access as the child's parent. See Fam. Code § 261.201(k); see also Gov't Code § 552.023. If the department receives another request for this information from a different requestor, then the department should again seek a decision from this office.