ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2011

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189

OR2011-04765

Dear Mr. Day:

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# 413820 (City ID# RCCA11-0006).

The City of Royse City (the "city") received a request for all records relating to a named individual dated 1995 to present, as well as records of any police calls to a specified address for the same time period. You state the city will redact social security numbers under section 552.147 of the Government Code.[1] You claim that the submitted information is excepted from disclosure under sections 552.101 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. 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.

[1]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.

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, in part, asks the city for any arrest records of a named individual. We find this portion of the request requires the city to compile unspecified law enforcement records concerning the named individual, thus implicating her right to privacy. Therefore, to the extent the city maintains any law enforcement records in which the named individual is a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.[2]

We note that you have submitted records in which the named individual is not a suspect, arrestee, or criminal defendant, as well as records that relate only to traffic violations. 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 arguments against disclosure of this information.

Section 552.101 of the Government Code 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 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.

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[2]As our ruling is dispositive, we need not address your argument against the disclosure of this information.

Fam. Code § 261.201(a). You assert some of the submitted information is confidential in its entirety under section 261.201. Upon review, we agree report number 0110C0227 was used or developed in an investigation of alleged or suspected child abuse or neglect and falls within the scope of chapter 261 of the Family Code. *See id.* §§ 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of the Family Code). Accordingly, this information is within the scope of section 261.201(a)(1) of the Family Code. As you do not state the city's police department has adopted a rule governing the release of this type of information, we assume none exists. Given this assumption, we conclude the city must withhold report number 0110C0227 under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.[3] *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). However, the remaining report you seek to withhold under section 261.201 pertains to a domestic disturbance. We conclude you have not demonstrated how this information was used or developed in an investigation under chapter 261. *See* Fam. Code §§ 261.001(1), (4), 101.003(a). Accordingly, we conclude none of the remaining information is confidential under section 261.201 of the Family Code and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). Upon review, we find the Federal Bureau of Investigation ("FBI") number we have marked constitutes CHRI generated by the FBI, which the city must withhold pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

You state you will redact Texas driver's license and license plate numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).[4] Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or personal identification document issued by a Texas agency is excepted from public release. *Id.* § 552.130(a). Upon review, we find

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[3]As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

[4]Open Records Decision No. 684 is a previous determination issued to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

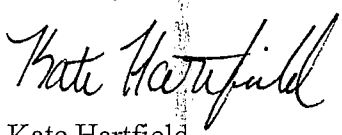
the DPS number you have marked is not Texas motor vehicle record information for the purposes of section 552.130, and it may not be withheld on that basis. However, we find the remaining Texas driver's license and license plate numbers you have marked, as well as those we have marked, constitute Texas motor vehicle record information that must be withheld under section 552.130 of the Government Code.

In summary, to the extent the city maintains any law enforcement records in which the named individual is a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold report number 0110C0227 under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. The city must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The city must withhold the marked Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code. The remaining information must be released.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 413820

Enc. Submitted documents

c: Requestor
(w/o enclosures)