



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2011

Ms. Luz E. Sandoval Walker  
Assistant City Attorney  
City of El Paso  
810 Overland  
El Paso, Texas 79901

OR2011-04969

Dear Ms. Sandoval Walker:

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# 416229 (El Paso P.D. Reference # 2011-02-44-AG).

The El Paso Police Department (the "department") received a request for information pertaining to a specified case number as well as any information regarding a named individual. You state you have released some of the requested information to the requestor. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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, 683-85 (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 and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, is for unspecified law enforcement records involving a named individual. This portion of the request requires the department to compile the named individual's criminal history and thereby implicates her privacy interests. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. You have submitted reports that do not list the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual and may not be withheld as a compilation of criminal history information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in part as follows:

(a) Except as provided by Section 261.203, the 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). Upon review, we agree that a portion of the submitted information was used or developed in investigations of alleged child abuse or neglect under chapter 261. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Chapter 261 of the Family Code); *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). As there is no indication the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we find the information we have marked is confidential pursuant to section 261.201(a) of the Family Code and must be withheld under

section 552.101 of the Government Code. However, we find the remaining information was not used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/tf

Ref: ID# 416229

Enc. Submitted documents

c: Requestor  
(w/o enclosures)