



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 6, 2011

Ms. Luz E. Sandoval Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2011-07977

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# 419611.

The El Paso Police Department (the "department") received a request for information pertaining to the requestor and a named individual. You state the department has released some of the requested information. You claim some of the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that 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. United States 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). We further find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert that the present request requires the department to compile the criminal history of the named individual. After reviewing the request and the submitted information, however, we believe the requestor is seeking, in part, specific domestic violence reports involving the named individual in which she is the victim. Accordingly, this portion of the request does not implicate the named individual's right to privacy, and the incident report of domestic violence involving the requestor and the named individual, report number 10-261076, may not be withheld under section 552.101 on the basis of common-law privacy. However, to the extent the department maintains other 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. We note the department has submitted information which does not depict the named individual as a suspect, arrestee, or a criminal defendant. This information does not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101.

Section 552.101 also encompasses section 261.201(a) 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.

...

(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.

Fam. Code § 261.201(a), (k). You contend that the submitted information was used or developed in investigations of alleged child abuse or neglect. Based on your representations and our review of the information at issue, we agree report numbers 09-031146 and 10-266075 are subject to section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family 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). We note that the requestor is listed as a parent of the child victim listed in report number 09-031146 and listed as a step-parent of the child victim listed in report number 10-266075. However, these reports reflect that the requestor is also alleged to have committed the suspected abuse or neglect. Accordingly, this requestor does not have a right of access to report numbers 09-031146 or 10-266075 pursuant to section 261.201(k). *See id.* § 261.201(k). Thus, we conclude report numbers 09-031146 and 10-266075 must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we find you have failed to demonstrate that any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established any of the remaining information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Therefore, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You assert report numbers 10-261076, 10-287169, and 10-299107 are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 10-261076, 10-287169, and 10-299107 relate to pending criminal investigations and prosecutions. Based upon this representation, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude that section 552.108(a)(1) of the Government Code is generally applicable to report numbers 10-261076, 10-287169, and 10-299107.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, you may withhold report numbers 10-261076, 10-287169, and 10-299107 from disclosure under section 552.108(a)(1).

In summary, except for domestic violence reports involving the named individual in which the requestor is the victim, to the extent the department maintains other 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 report numbers 09-031146 and 10-266075 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold report numbers 10-261076, 10-287169, and 10-299107 from disclosure under section 552.108(a)(1) of the Government Code. The basic 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 419611

Enc. Submitted documents

c: Requestor  
(w/o enclosures)