



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 20, 2011

Ms. Tiffany Bull  
Assistant City Attorney  
City of Arlington  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2011-08726

Dear Ms. Bull:

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# 421134 (Ref. No. 3614-033111).

The Arlington Police Department (the "department") received a request for all information pertaining to two named individuals. You claim the 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.

Initially, we note you have not submitted information pertaining to the second individual named in the request for information. To the extent the department maintains information concerning this individual that existed on the date the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 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) (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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the department, in part, to compile unspecified law enforcement records concerning the first individual named in the request for information, thus implicating this individual's rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the first 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 submitted incident reports 05-73140 and 09-63302, which do not list the first named individual as a suspect, arrestee, or criminal defendant. Thus, we will consider your claims under section 552.101 in conjunction with section 58.007 of the Family Code, and section 552.108 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code which provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Juvenile law enforcement records relating to conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c). Incident report number 05-73140 concerns two fifteen-year-old children who were cited for disorderly

conduct in 2005 because they were fighting at school. Thus, this information involves children allegedly engaged in conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(b)(1)(A) (defining conduct indicating need for supervision to include misdemeanor punishable by fine only); *see also* Penal Code §§ 42.01(a)(6) (disorderly conduct includes fight with another in public place), .01(d) (violation of section 42.01(a)(6) is Class C misdemeanor), 12.23 (individual guilty of Class C misdemeanor punishable by fine not to exceed \$500.00). You state, and it does not appear, that any of the exceptions in section 58.007 apply to incident report 05-73140. Therefore, this information is confidential pursuant to section 58.007(c) of the Family Code, and the department must withhold it under section 552.101 of the Government Code.

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

(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).<sup>1</sup> Incident report 09-63302 pertains to the department's investigation of the alleged sexual assault of a thirteen-year-old child. *See id.* § 261.001(1)(E) (definition of "abuse" for purposes of Family Code chapter 261 includes sexual assault of a child under Penal Code section 21.011); *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). Accordingly, we find this information is subject to section 261.201. You have not indicated the department has adopted a rule that governs the release of this information in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude incident report 09-63302 is confidential under section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup>

In summary, to the extent the department maintains law enforcement records depicting the first individual named in the request for information 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 incident report 05-73140 under section 552.101 in conjunction with section 58.007 of the Family Code. Finally, the department must withhold incident report 09-63302 under section 552.101 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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

Ref: ID# 421134

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.