



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2011

Ms. Delietrice Henry  
Open Records Request Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2011-10388

Dear Ms. Henry:

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# 424441 (ORR# NEVJ042911).

The Plano Police Department (the "department") received a request for information pertaining to two listed addresses and three named individuals and the requestor. You claim portions of the submitted information are 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 of the Government Code excepts from disclosure "information that is 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 of privacy. Common-law privacy 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 established. *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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, a portion of the request asks for unspecified law enforcement records pertaining to three named individuals and the requestor. Thus, that portion of the request requires the department to compile these individuals' criminal histories. We note the requestor has a right of access under section 552.023 of the Government Code to her own criminal history. *See* Gov't Code § 552.023 (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 Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning self). However, to the extent they exist, the department must generally withhold any reports listing the other three named individuals as suspects, arrestees, or criminal defendants under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestor is the spouse of one of the named individuals. As such, the requestor may be acting as the authorized representative of her spouse, and thus, have a special right of access under section 552.023 to law enforcement records depicting her spouse as a suspect, arrestee, or criminal defendant, to the extent they exist. *See* Gov't Code § 552.023; *see also* ORD 481 at 4. Thus, if the requestor is acting as the authorized representative of her spouse, then to the extent law enforcement records depicting her spouse as a suspect, arrestee, or criminal defendant exist, they may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of her spouse, then to the extent law enforcement records depicting her spouse as a suspect, arrestee, or criminal defendant exist, the department must withhold any such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information that does not involve the named individuals as suspects, arrestees or criminal defendants. This information does not implicate the privacy interests of these named individuals. Thus, we will address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as 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.

Fam. Code § 261.201(a). You contend that the reports in Exhibits C and E were used or developed in investigations of alleged child abuse. Based on your representations and our review of the information at issue, we agree the reports in Exhibits C and E are subject to section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” 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). You do not inform us, and we are not aware, the department has adopted a rule that governs the release of this type of information; therefore we assume no such rule exists. Given that assumption, we conclude Exhibits C and E must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>1</sup>

Next, Exhibit D contains information which is subject to common-law privacy, which we discussed above, and which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See* 540 S.W.2d at 685. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked information in Exhibit D that is highly intimate or embarrassing and of no legitimate public concern. We conclude the department must withhold the marked information in Exhibit D under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983). However, the remaining information you marked in Exhibit D is not highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department may not withhold the remaining information you marked under section 552.101 in conjunction with common-law privacy.

You also raise the doctrine of constitutional privacy for portions of Exhibit D. Constitutional privacy is also encompassed by section 552.101 of the Government Code and protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie*

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

*v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985)). Upon review, we conclude the department has failed to establish any of the information in Exhibit D comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. See Open Records Decision Nos. 470, 455, 444 (1986), 423 at 2 (1984). Accordingly, none of the information at issue may be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, to the extent the department maintains law enforcement records depicting the named individuals other than the requestor as suspects, arrestees, or criminal defendants, the department must generally withhold any such information under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of her spouse, the department may not withhold any information listing her spouse as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy. Exhibits C and E must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/em

Ref: ID# 424441

Enc. Submitted documents

c: Requestor  
(w/o enclosures)