



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2011

Ms. Janis K. Hampton
Bryan City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2011-13121

Dear Ms. Hampton:

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# 429506.

The Bryan Police Department (the "department") received a request for case number 08-1100240. You claim that 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including 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.

...

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). Upon review, we find the submitted information consists of information used or developed in the department's investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (defining "abuse" for the purposes of chapter 261 of the Family Code as including offense of sexual assault under Penal Code section 22.011); Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.011 as person under 17 years of age). Accordingly, we determine the submitted information is within the scope of section 261.201 of the Family Code. The requestor, however, is a parent of the child victim listed in the report and that parent is not alleged to have committed the alleged

or suspected abuse. Therefore, the submitted information may not be withheld from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201 also provides that before a record concerning a child can be copied or inspected by the child's parent, managing conservator, or other legal representative under section 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the parent's, managing conservator's, or other legal representative's child must be redacted. *See id.* § 261.201(l)(1). Further, section 261.201(l)(3) provides that before a parent can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). Thus, the department must withhold the identities of the additional juvenile witnesses and victims, other than the requestor's child, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The department must also withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Additionally section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider whether any portion of the remaining information must be withheld under other law.

Section 552.101 also 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. 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. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must release the submitted information to the requestor pursuant to section 261.201(k) of the Family Code, but in doing so must withhold (1) the identities of the other juveniles witnesses and victims, other than the requestor's child, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code; (2) the identity of the reporting party we have marked under section 552.101 of the Government Code in conjunction with

section 261.201(1)(3) of the Family Code; and (3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 429506

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹Because the requestor has a special right of access to information that would ordinarily be confidential, the department must again seek a decision from this office if it receives another request for the same information from a different requestor. See Gov't Code §§ 552.301(a), .302.