



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2011

Captain Greg Minton  
Assistant Chief  
Leander Police Department  
705 Leander Drive  
Leander, Texas 78641

OR2011-14167

Dear Captain Minton:

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# 431359.

The Leander Police Department (the "department") received two requests from different requestors for information related to a specified address. The first request also seeks information related to a named individual and the requestor's client. The second request is limited to a specified time period. You claim that 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.

We begin by noting that some of the submitted documents are not responsive to the instant requests for information. This information, which we have marked, was created after the date the department received the first request and is not within the date range specified in the second request. This ruling does not address the public availability of any information that is not responsive to these requests, and the department need not release that information in response to these requests. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision

No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). Further, we note some of the remaining submitted information, which we have marked, is not responsive to the second request because it falls outside of the specified date range. The department need not release this information to the second requestor.

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 (1) it 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. 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). 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, the first requestor seeks access to unspecified law enforcement records relating to her client and another named individual. Thus, this request requires the department to compile the named individual’s criminal history and thereby implicates this individual’s privacy interest. We note that the first requestor has a special right of access under section 552.023 of the Government Code to any information that would be excepted from public disclosure to protect her client’s privacy. *See Gov’t Code § 552.023* (“a 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.”). Therefore, information relating to the first requestor’s client may not be withheld from the first requestor as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. However, to the extent that the department maintains any law enforcement records in which the other named individual is listed as a suspect, arrestee, or criminal defendant, the department must withhold any such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that you have submitted records responsive to the first request in which the named individual is not listed as a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the named individual’s criminal history and may not be withheld

under section 552.101 on that basis. We will consider your arguments against disclosure of this information.

Further, the second requestor asks the department to compile all law enforcement records pertaining to a specified address. We note that a request for all law enforcement records pertaining to a specified address does not implicate any individual's privacy interest. Therefore, the department may not withhold any information from the second requestor as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Thus, we will also consider your remaining arguments against disclosure of the information responsive to the second request.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential, such as section 261.201 of the Family Code, which provides in pertinent part:

(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). We note the submitted information includes a report of alleged abuse or neglect of a child. Upon review, we find that the information at issue indicates a report was made to Child Protective Services ("CPS") of alleged child abuse or neglect. *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). Accordingly, the information we have marked is within the scope of section 261.201 of the Family Code. Thus, we find that the information pertaining to the report to CPS, which we have marked, is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision Nos. 440 at 2 (1986) (predecessor statute).

As previously discussed, section 552.101 of the Government Code encompasses the common-law right of privacy, which protects information that is highly intimate or embarrassing and is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d

at 685. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, one of the remaining reports, which we have marked, reveals that the first requestor's client knows the identity of the individual involved, as well as the nature of the information at issue. Therefore, withholding only the individual's identity or certain details of the incident from the first requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the information we have marked in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you contend some of the remaining information is excepted under section 552.108 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 generally state that the remaining information relates to "pending investigation(s)." However, you have not demonstrated how the release of the information at issue would interfere with the detection, investigation, or prosecution of a specific crime. Therefore, you have not met your burden under section 552.108(a)(1). Because you have failed to demonstrate the applicability of section 552.108, the department may not withhold the remaining information under section 552.108 of the Government Code.

Next, we note some of the remaining information is subject to sections 552.117 and 552.130 of the Government Code.<sup>1</sup> Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.<sup>2</sup> Act of

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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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). We have marked a police officer's personal information in the remaining information. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We note section 552.130 protects personal privacy. We further note that the first requestor is an attorney representing an individual whose information is at issue and the second requestor's information is also at issue. Accordingly, the first requestor has a right of access to her client's motor vehicle record information and the second requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code. *See* Gov't Code § 552.023. Thus, the department must release the motor vehicle record information belonging to the first requestor's client or the second requestor according to their respective rights of access. The department must withhold the remaining motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent that the department maintains any law enforcement records in which the individual named in the first request that is not the first requestor's client is listed as a suspect, arrestee, or criminal defendant, the department must withhold any such information from the first requestor 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(a) of the Family Code. The department must withhold the report we have marked in its entirety 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 552.117(a)(2) of the Government Code. Except for information to which the first and second requestors have respective rights of access, the department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government 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,

A handwritten signature in black ink, appearing to read "T. Wilcox". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/bs

Ref: ID# 431359

Enc. Submitted documents

c: Requestors  
(w/o enclosures)