



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2011

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
Killeen Police Department  
3304 Community Boulevard  
Killeen, Texas 76542

OR2011-15753

Dear Ms. Mapes:

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# 434314 (Killeen ID# W006113).

The Killeen Police Department (the "department") received a request for all police reports involving the requestor and her husband. You state the department has released some of the information. You claim the submitted 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 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 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 courthouses 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the request requires the department to compile unspecified criminal history records concerning the requestor's husband, and thus, generally implicates his right to privacy. However, the submitted information includes a report pertaining to a domestic violence incident involving both the requestor and her husband. Upon review, we believe the requestor is seeking, in part, specific domestic violence reports involving herself and the named individual. Accordingly, we find the domestic violence report does not implicate the named individual's right to privacy, and it may not be withheld under section 552.101 on the basis of common-law privacy. As to the remaining requested information, we note the requestor may be her husband's authorized representative. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles). Therefore, we must rule conditionally. If the department maintains any other law enforcement records depicting the requestor's husband as a suspect, arrestee, or criminal defendant, and the department determines the requestor is not her husband's authorized representative, then the department must withhold any such information under section 552.101 in conjunction with common-law privacy. However, if the department determines the requestor is her husband's authorized representative, then the department may not withhold any information related to him on the basis of common-law privacy. In that case we will consider your raised exceptions.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which states:

(a) Except as provided by Section 261.203, the 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 department 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 state report 08-012014 was used or developed in an investigation of alleged child neglect. *See id.* § 261.001 (defining “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). We note the requestor is a parent of the children named in the report; however, the requestor is named as a possible suspect in the investigation. *See id.* § 261.201(k). Accordingly, the department must withhold report 08-012014 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a)(1) of the Government Code 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 11-007293 pertains to a pending prosecution and release of this information would jeopardize that prosecution. You state report 11-008660 pertains to an ongoing investigation and release of this information would hinder that investigation. *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). Based on these representations and our review, we agree section 552.108(a)(1) of the Government Code is generally applicable to reports 11-007293 and 11-008660.

However, 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*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold reports 11-007293 and 11-008660 under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the domestic violence report, if the department maintains law enforcement records depicting the requestor's husband as a suspect, arrestee, or criminal defendant, and the department determines the requestor is not her husband's authorized representative, then the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor is her husband's authorized representative, then the department may not withhold any information related to him on the basis of common-law privacy. The department must withhold report 08-012014 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 reports 11-007293 and 11-008660 under section 552.108(a)(1) of the Government 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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 434314

Enc. Submitted documents

c: Requestor  
(w/o enclosures)