



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 28, 2011

Ms. Elizabeth L. White  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2011-17381

Dear Ms. White:

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# 437871.

The City of League City (the "city"), which you represent, received a request for three specified records and any records of incidents or arrests for two named individuals at a specified address. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 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 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). 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to

the public. The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the individuals' right to privacy. Therefore, to the extent the city maintains law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant, it must withhold any such information under section 552.101 in conjunction with common-law privacy.<sup>1</sup> We note, however, you have submitted information that does not list either of the named individuals as a suspect, arrestee, or criminal defendant. This information, therefore, does not implicate an individual's right to privacy, and it may not be withheld as a compilation of criminal history.

Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997. Section 58.007(c) reads as follows:

(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 Subchapter B.

Fam. Code § 58.007(c). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"); *see also id.* 51.02(2)(A) (defining "child" as person who is ten years of age or older and under seventeen years of age). Upon review, we find you have failed to establish how any of the information at issue constitutes juvenile law enforcement records subject to section 58.007. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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.

(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.

*Id.* § 261.201(a). Although you claim portions of the submitted information are confidential under section 261.201 of the Family Code, you do not explain how the information at issue was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Therefore, you have also failed to establish the applicability of section 261.201 to this information. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

The types of information considered intimate and 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. *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, although you seek to withhold the responsive information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. However, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license or driver’s license, motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Act of

May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). Upon review, we find a portion of the remaining information, which is subject to section 552.130. Accordingly, the city must withhold this information, which we have marked under section 552.130 of the Government Code. However, none of the remaining information is subject to section 552.130, and the city may not withhold it on that basis.

In summary, to the extent the city maintains law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant, it must withhold any such information under section 552.101 in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.

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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 437871

Enc. Submitted documents

c: Requestor  
(w/o enclosures)