



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2011

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-17898

Dear Mr. Bounds:

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# 438584.

The Corpus Christi Police Department (the "department") received a request for all police records related to two named individuals.¹ You state the department is providing some responsive information to the requestor. You further state the department will redact information pursuant to sections 552.130 and 552.147 of the Government Code and Open Records Decision No. 684 (2009).² You claim that some of the submitted information is

¹We note the department sought and received clarification from the requestor regarding the request. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130, without the necessity of requesting an attorney general decision. We note, however, that effective September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.

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 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 demonstrated. *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) (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 that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

In this instance, the request seeks unspecified law enforcement records pertaining to two named individuals. Thus, the request implicates those individuals’ rights to privacy. Therefore, to the extent the department maintains records listing the named individuals as suspects, arrestees, or criminal defendants, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that you have submitted records that do not list either of the named individuals as a suspect, arrestee, or defendant. This information may not be withheld under section 552.101 as a compilation of the individuals’ criminal histories on the basis of common-law privacy. However, we will address your remaining arguments against the disclosure of this information.

We note common-law privacy also protects other types of information. The types 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. *See* 540 S.W.2d 668, 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 find the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must

withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 261.201 of the Family Code, which provides, in pertinent part, as follows:

(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.

Fam. Code § 261.201(a). We find that the information you have marked consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(A) (defining abuse for purposes of Fam. Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Upon review, we determine the information you have marked is confidential under section 261.201(a). Accordingly, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, to the extent the department maintains records listing the named individuals as suspects, arrestees, or criminal defendants, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with (1) common-law privacy and (2) section 261.201 of the Family Code. The remaining submitted information must be released to the requestor.

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 438584

Enc. Submitted documents

c: Requestor
(w/o enclosures)