



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2011

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-18097

Dear Ms. Villarreal:

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# 438790 (ORR# LGL-11-1348).

The City of Waco (the "city") received a request for information pertaining to the requestor. We understand you are withholding social security numbers, other than the requestor's social security number, pursuant to section 552.147 of the Government Code.¹ You indicate the city has made some of the requested information available to the requestor, but claim some of the submitted information is excepted from disclosure under sections 552.101 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. This section encompasses the doctrine of common-law privacy 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*

¹Section 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.

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). You assert the submitted information is confidential under the decision in *Reporters Committee*. Thus, we understand you to assert the submitted information consists of unspecified law enforcement records that are confidential under common-law privacy. *See id.* However, the requestor asked for her own information, and she has a right of access to her own private information pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(a)* (“[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”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy on that ground.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including section 58.007 of the Family Code. Section 58.007(c) reads as follows:

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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Some of the submitted documents involve alleged juvenile delinquent conduct occurring after September 1, 1997. *See id.* § 51.02(2) (for purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age). None of the exceptions in section 58.007 appears to apply. Therefore, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007 of the Government Code. However, we find you have not established any of the remaining information involves alleged juvenile delinquent conduct occurring after September 1, 1997.

Thus, none of the remaining information is confidential under section 58.007, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses 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.

Id. § 261.201(a), (k), (l). You assert some of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find some of the information at issue is within the scope of section 261.201(a). We note, however, the requestor is the victim of the suspected abuse and she is at least 18 years of age. Thus, the city may not withhold the information at issue from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Nevertheless, section 261.201(l)(1) provides that before a record concerning a child can be copied or inspected by the child under section 261.201(k), any personally identifiable information about a victim or witness under 18 years of age must be redacted. *See id.* § 261.201(l)(1). Therefore, the city must withhold the identifying information of the other juvenile victims in the documents at issue, which we have marked, under section 552.101 in conjunction with section 261.201(l)(1). However, we find none of the remaining information is confidential under section 261.201(l)(1), and the city may not withhold it under section 552.101 on that ground. Section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we must address your arguments under section 552.130 of the Government Code for this information, as well as the remaining documents.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

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). The city must withhold the motor vehicle record information we have marked under section 552.130. The remaining information does not consist of motor vehicle record information that is excepted from disclosure under section 552.130.

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201(l)(1) of the Government Code. The city must also withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.²

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 438790

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.