



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2011

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2011-19072

Dear Ms. Pemberton:

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# 440715 (City ID# W006587).

The City of Killeen (the "city") received a request for all incident, accident, and arrest reports pertaining to a named individual, including all reports resulting from calls made by the requestor asking for police assistance at a specified address because of the named individual for a specified time period. You state the city has released some information to the requestor. 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 representative sample of information.¹

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to the named individual. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. *See id.* at 681-82. A compilation of an individual’s criminal history record information 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. After reviewing the request and the responsive information, we find the requestor is seeking, in part, specific domestic violence incident reports involving herself and the named individual. Accordingly, this portion of the request does not implicate the named individual’s right to privacy, and the domestic violence incident reports involving the requestor and the named individual may not be withheld under section 552.101 on the basis of the named individual’s privacy interests in a compilation of his criminal history. However, to the extent the city maintains other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In addition to the domestic violence incident reports, we note you have submitted records 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, however, consider your remaining arguments against disclosure of this information and the domestic violence incident reports.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in 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.

...

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find incident report 11-004190, which involves the offense of driving while intoxicated with child passenger, was used or developed by the city's police department in an investigation of alleged child abuse. *See id.* § 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). Accordingly, we find incident report 11-004190 is within the scope of section 261.201 of the Family Code.

In this instance, however, we note the requestor is the mother of the child victim listed in incident report 11-004190. Further, the requestor is not the individual alleged to have committed the suspected abuse. Thus, the city may not use subsection 261.201(a) to withhold incident report 11-004190 from this requestor. *Id.* § 261.201(k). However, subsection 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 will address your remaining arguments against disclosure of this incident report.

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code. Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any

person involved in the accident; and (3) specific location of the accident. *See id.* § 550.065(c)(4). In this instance, the requestor has not provided the city with two of the three requisite pieces of information specified by section 550.065(c)(4). Accordingly, the city must withhold the CR-3 accident reports we have marked from the requestor under section 552.101 in conjunction with section 550.065 of the Transportation Code.

As previously noted, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Additionally, as we also noted above, the Texas Supreme Court discussed the common-law privacy test requirements in the *Industrial Foundation* decision. In that decision, the Texas Supreme court determined that the types of information considered highly intimate or embarrassing 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. 540 S.W.2d at 683-685. 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.

We note incident reports 09-16915 and 11-004202, as well as calls for service report 1194509, reflect that the requestor knows the nature of the incident to which the reports pertain and the identity of the named individual involved. Therefore, withholding only the named individual's identity or certain details of the incident from the requestor would not preserve the named individual's common-law right to privacy. Accordingly, to protect the named individual's privacy, the city must withhold incident reports 09-16915 and 11-004202, as well as calls for service report 1194509, in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Additionally, we note this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are 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 some of the information in incident reports 08-017000, 10-004124, 11-003350, and 11-004190, as well as calls for service reports 1284079 and 1247431, is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal

investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state incident reports 09-004431 and 11-010185 pertain to concluded criminal investigations that did not result in convictions or deferred adjudication. Based on your representations and our review, we conclude that the city has demonstrated that section 552.108(a)(2) is applicable to these reports.

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold incident reports 09-004431 and 11-010185 under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release.² Gov’t Code § 552.130(a)(1), (2). We note the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the city must withhold the motor vehicle record information we have marked in the remaining information under section 552.130.

In summary, other than domestic violence records also involving the requestor, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the CR-3 accident reports we have marked from the requestor under section 552.101 in conjunction with section 550.065 of the Transportation Code. The city must withhold incident reports 09-16915 and 11-004202, as well as calls for service report 1194509, in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked in incident reports 08-017000, 10-004124, 11-003350, and 11-004190, as well as calls for service reports 1284079 and 1247431, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold incident reports 09-004431 and 11-010185 under section 552.108(a)(2)

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the Government Code. The city must withhold the motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code. The city must release the remaining information.³

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 440715

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note a portion of the information being released contains confidential information to which the requestor has a right of access as the child's parent. *See* Fam. Code § 261.201(k). If the city receives another request for this information from a different requestor, then the city should again seek a decision from this office. We note the information to be released also contains social security numbers. 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. We note, however, the requestor has a right of access to her own social security number. *See generally* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).