



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2012

Ms. Bridget Chapman  
Acting City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2012-01141

Dear Ms. Chapman:

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# 443070 (ORR 514).

The Georgetown Police Department (the "department") received a request for information pertaining to a specified address and two named individuals. 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. This section encompasses the doctrine of common-law privacy, which protects information if (1) it 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. United States 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 courthouse

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.

In this instance, the requestor, in part, seeks access to unspecified law enforcement records relating to two named individuals. Thus, this portion of the request requires the department to compile the named individuals' criminal histories and thereby implicates their privacy interests. We note, however, because the common-law right to privacy is a personal right that lapses at death, the department may not withhold any compiled criminal history information that relates to deceased individuals based upon common-law privacy. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Thus, because both named individuals are deceased, the department may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy based on the deceased individuals' privacy interests.

Section 552.101 of the Government Code also encompasses information protected by 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; 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 note Exhibit C relates to an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold Exhibit C in its entirety under section 552.101 of the Government Code in

conjunction with section 261.201 of the Family Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B relates to a pending criminal investigation. However, we note Exhibit B involves a murder and the listed suspect of this offense is now deceased. Because no criminal charges are possible in this case, you have failed to demonstrate how release of this information would interfere with the investigation of the case. Accordingly, we find you have not established section 552.108(a)(1) applies to Exhibit B. Thus, the department may not withhold Exhibit B under section 552.108(a)(1).

We note the remaining information contains motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country, is excepted from public release.<sup>2</sup> Gov’t Code § 552.130(a)(2). We note, however, section 552.130 is designed to protect the privacy of individuals, and, as noted above, the right to privacy expires at death. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. The license plate number we have marked pertains to a deceased individual’s vehicle. To the extent a living individual has an interest in the information relating to the deceased individual’s vehicle, it must be withheld under section 552.130. However, if this information pertains solely to the deceased individual, it may not be withheld under section 552.130.

In summary, the department must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent a living individual has an interest in the information relating to the deceased individual’s vehicle, the department must withhold the marked information pertaining to this vehicle under section 552.130 of the Government Code. The remaining information must be released.

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<sup>1</sup>As our ruling is dispositive with respect to this information, we need not address your remaining argument against its disclosure.

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

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 443070

Enc. Submitted documents

c: Requestor  
(w/o enclosures)