



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2012

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 700  
Richardson, Texas 75081

OR2012-01684

Dear Mr. Griffith:

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# 444145 (ORR #s 10-4639, 10-4657, 10-4658, 10-4659, 10-4671, 10-4677).

The McKinney Police Department (the "department"), which you represent, received six requests for information pertaining to (1) specified incidents, (2) any records of complaints made after the arrest of a named individual, and (3) a specified internal affairs investigation. 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.

Initially, we note some of the submitted information pertaining to the specified internal affairs investigation is not responsive because the information was created after the date the department received the request. The department need not release this non-responsive information, which we have indicated, and this ruling will not address that 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 case, two of the requests for information seek, in part, unspecified law enforcement records pertaining to the named individual. These parts of the requests require the department to compile the named individual's criminal history and thus implicate the named individual's right to privacy. However, we find the parts of these requests that seek information pertaining to reports 11-006738 and 11-007246 do not implicate the named individual's privacy interests. As such, information pertaining to reports 11-006738 and 11-007246 may not be withheld as part of a criminal history compilation. However, to the extent the department maintains law enforcement records other than reports 11-006738 and 11-007246 that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We will address your arguments against disclosure of the information pertaining to reports 11-006738 and 11-007246.

Section 552.101 of the Government Code also encompasses information made confidential by statute, including section 261.201(a) of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). You assert the information at issue is subject to section 261.201(a). Upon review, we find most of the information at issue, which we have marked and indicated, either was used or developed in an investigation of alleged or suspected child abuse, or

reveals the identity of the person who made the report. Thus, we find this information is within the scope of section 261.201(a) of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as person under 17 years of age). You do not inform us that 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, the information we have marked and indicated is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> We note, however, the remaining information at issue pertains to an internal affairs investigation. We find you have failed to demonstrate that any of the remaining information at issue was used or developed in an investigation under chapter 261 of the Family Code. Accordingly, section 261.201(a) is not applicable to any of the remaining information at issue, and no portion of the remaining information at issue may be withheld under section 552.101 on that basis.

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 683-85. Upon review, we find some of the information in event report 11-008093 is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department 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 department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides in part that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the department must withhold the cellular telephone account number we have marked under section 552.136 of the Government Code.

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

In summary, to the extent the department maintains law enforcement records other than reports 11-006738 and 11-007246 that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information we have marked in event report 11-008093 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the cellular telephone account number we have marked under section 552.136 of the Government Code. The department must release the remaining responsive 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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 444145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)