



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2012

Chief James S. Kelley
Sweetwater Police Department
P.O. Box 450
Sweetwater, Texas 79556

OR2012-04241

Dear Chief Kelley:

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# 448680.

The Sweetwater Police Department (the "department") received a request for all civil and criminal records pertaining to two named individuals for a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.132 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. Common-law privacy protects information if it (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 established. *Id.* at 681-82. This office has found 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 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 requestor asks the department for all records associated with two named individuals, thus implicating these individuals' right to privacy. Therefore, to the extent the department maintains any law enforcement records in which either of the named individuals are listed as a suspect, arrestee, or criminal defendant, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that you have submitted records in which the named individuals are not listed as suspects, arrestees, or criminal defendants. These records do not constitute a compilation of the individuals' criminal history and may not be withheld under section 552.101 on this basis. Thus, we will consider your arguments against disclosure of this information.

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 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). We note some of the information at issue relates to investigations of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.021 as a person younger than 17 years of age). Accordingly, we find this information, which we have marked, 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 information we have marked is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it under

section 552.101 of the Government Code.¹ *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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the requested information. *See id.* §§ 552.108(a)(1), .301 (e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue pertains to a pending criminal investigation. However, upon review of the remaining information at issue, which pertains to several different incidents, we find that you have failed to explain how release of any portion of the remaining information at issue would interfere with a particular criminal investigation or prosecution. Thus, you have not established that section 552.108(a)(1) applies, and none of the remaining information at issue may be withheld under section 552.108(a)(1) of the Government Code.

Section 552.132 of the Government Code provides, in relevant part, the following:

(b) The following information held by the crime victim’s compensation division of the attorney general’s office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general’s office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

Gov’t Code § 552.132(b), (d). The remaining information at issue is held by the department, not the crime victim’s compensation division of this office; therefore, section 552.132(b) is

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

not applicable to this information. Additionally, you provide no representation the victims are employees of the department who elected in accordance with section 552.132(d). We, therefore, conclude the department may not withhold any portion of the remaining information at issue under section 552.132 of the Government Code.

In summary, to the extent the department maintains any law enforcement records in which either of the named individuals are listed as a suspect, arrestee, or criminal defendant, 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 we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must release the remaining information at issue.

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/ag

Ref: ID# 448680

Enc. Submitted documents

c: Requestor
(w/o enclosures)