



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2012

Ms. Kristen Hamilton
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-05507

Dear Ms. Kristen:

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# 450924.

The El Paso Police Department (the "department") received a request for a named individual's arrest record. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the doctrine of common-law privacy, which 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. *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 prongs of this test must be established. *See 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. U.S. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records, thus implicating the privacy of the named individual. We note, however, the requestor has provided a form signed by the named individual authorizing the requestor to receive the requested information. Thus, as the named individual's authorized representative, the requestor has a special right of access under section 552.023 of the Government Code to information that would ordinarily be withheld to protect her client's privacy interests. Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Accordingly, the requestor has a special right of access to the submitted information, and the department may not withhold any of this information under section 552.101 in conjunction with common-law privacy as a criminal history compilation.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding former section 51.14(d) of Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile criminal conduct occurring before January 1, 1996, are governed by former section 51.14, which was continued in effect for that purpose.¹ Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

¹Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591.

Fam. Code 51.14 (repealed 1995). In this instance, some of the submitted information pertains to incidents that allegedly occurred in 1991 and lists as suspects individuals who qualified as a “child” at the time of the offenses. *See id.* § 52.01 (defining “child” for purposes of title 3 of Family Code as individual who is ten years of age or older and under seventeen years of age). Further, the requestor does not fall within one of the categories in section 51.14(d) under which inspection of the records would be permitted. Therefore, we find former section 51.14(d) is applicable to the information we have marked. *See id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct engaged in by child). Thus, the department must withhold this information pursuant to section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code.

Section 552.101 of the Government Code 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.

See id. § 261.201(a), (k). Upon review, we find that a portion of the remaining information was used or developed in the department’s investigation of alleged or suspected child abuse

under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also id.* § 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). Therefore, this information falls within the scope of section 261.201. We note the requestor’s client is a parent of the alleged child victim listed in the information at issue. However, the requestor’s client is the individual accused of committing the alleged child abuse. Thus, the information at issue may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k) (stating child’s parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed abuse or neglect at issue). Accordingly, the department must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

We note that portions of the remaining information may be subject to section 552.1175 of the Government Code.² This section protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See Gov’t Code* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1). Upon review, we find the social security numbers we have marked in the remaining information pertain to peace officers employed by the department and are held by the department in its investigative capacity. Thus, to the extent this information relates to currently licensed peace officers who elect to restrict access to the information in accordance with section 552.1175(b), the department must withhold the marked social security numbers under section 552.1175 of the Government Code. Conversely, if the peace officers at issue are not currently licensed, or do not elect to restrict access to the information in accordance with section 552.1175(b), the information at issue may not be withheld pursuant to section 552.1175.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 51.14 and 261.201 of the Family Code. To the extent the social security numbers we have marked relate to currently licensed peace officers who elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the department must withhold this

²The 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).

information under section 552.1175 of the Government Code. The department 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 450924

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains the named individual's social security number, to which the requestor has a right of access under section 552.023 of the Government Code as the named individual's authorized representative, and fingerprints, to which the requestor has a right of access under section 560.002 of the Government Code. *See* Gov't Code §§ 552.023, 560.002; ORD 481 at 4. Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, if the department receives another request for information from an individual other the named individual or his authorized representative, the department is authorized to withhold the named individual's fingerprint under section 552.101 in conjunction with section 560.003. We further note that the information being released contains social security numbers belonging to individuals other than the named individual. 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. *See* Gov't Code § 552.147(b).