



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2012

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2012-06718

Dear Ms. Evans:

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# 452720 (GC No. 19385).

The Houston Police Department (the "department") received a request for all reports pertaining to the requestor and a named individual for a specified time period. You claim that 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 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 satisfied. *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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You argue the present request requires the department to compile unspecified law enforcement records concerning the named individual at issue. After reviewing the request and the submitted information, we find the requestor is seeking specific information involving himself and the named individual. Accordingly, the submitted information, which involves the requestor and the named individual, may not be withheld as a compilation of the named individual's criminal history under section 552.101.

Common-law privacy also protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. See ORD 393, 339; see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the report submitted as Exhibit 2 pertains to an alleged sexual assault. Additionally, the requestor is the suspect in the alleged sexual assault and knows the identity of the victim involved in the incident at issue. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the department must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup>

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201 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

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

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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we agree the report submitted as Exhibit 8 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003 (defining “child” for purposes of Fam. Code title 5), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). However, the requestor is a parent of the child victim listed in the report at issue and is not alleged to have committed the suspected abuse or neglect. Accordingly, Exhibit 8 may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l) states before a parent

can copy or inspect a record of his child under section 261.201(k), the identity of the reporting party must be redacted. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your remaining arguments against disclosure of Exhibit 8 and the remaining information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You explain the reports submitted as Exhibits 4, 5, 7, and 8 are related to concluded criminal investigations that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to Exhibits 4, 5, 7, and 8.

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[.]” *Id.* § 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 the reports submitted as Exhibits 3, 6, and 9 are related to investigations that are inactive pending additional leads. You explain, however, that the statute of limitations has not run, and the investigations may be reactivated once additional leads are developed. You state the release of Exhibits 3, 6, and 9 would interfere with the detection and investigation of crime. We note, however, Exhibit 6 pertains to a misdemeanor theft that occurred in September of 2008. You state the department received this request for information on February 6, 2012. The statute of limitations for this offense is two years. *See* Crim. Proc. Code art. 12.02 (indictment for Class B misdemeanor theft may be presented within two years from date of commission of the offense, and not afterward). More than two years have elapsed since the events giving rise to the investigation, and you have not informed this office any criminal charges were filed within the limitations period. Furthermore, you have not otherwise explained how release of Exhibit 6 would interfere with the detection, investigation, or prosecution of crime. Thus, Exhibit 6 may not be withheld under section 552.108(a)(1) of the Government Code. However, based on your representations, we conclude section 552.108(a)(1) is generally applicable to Exhibits 3 and 9. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*.

*See* 531 S.W.2d at 186-88; 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 department may withhold Exhibits 4, 5, 7, and 8 under section 552.108(a)(2) of the Government Code and Exhibits 3 and 9 under section 552.108(a)(1) of the Government Code. As noted above, section 261.201(1)(3) of the Family Code requires the identity of the reporting party be redacted from any information being released to the parent of a child victim. Therefore, when releasing basic information in Exhibit 8 under section 552.108(c) of the Government Code, the department must withhold the identity of the reporting party under section 261.201(1)(3) of the Family Code.

As previously discussed, section 552.101 of the Government Code encompasses the common-law right of privacy which protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find portions of Exhibit 6 contain highly intimate or embarrassing information of no legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information in Exhibit 6 is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides that information related to a motor vehicle operator's or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See* Gov't Code § 552.130(a). The department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold Exhibits 4, 5, 7, and 8 under section 552.108(a)(2) of the Government Code and Exhibits 3 and 9 under section 552.108(a)(1) of the Government Code. In releasing basic information in Exhibit 8, the department must withhold the identity of the reporting party under section 261.201(1)(3) of the Family Code.<sup>3</sup> The department must withhold the information we have marked in Exhibit 6 under section 552.101 of the Government Code in conjunction with common-law

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<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).

<sup>3</sup>We note the requestor has a right of access to some of the information being released. *See* Fam. Code § 261.201(k); Gov't Code § 552.023. Accordingly, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.

privacy and under section 552.130 of the Government Code. The remaining information in Exhibit 6 must be released.

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written over a light blue horizontal line.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 452720

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)