



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2012

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-10233

Dear Ms. Byles:

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# 457868 (CFW PIR No. W016321).

The City of Fort Worth (the "city") received a request for two specified incident reports. You state the city is releasing one of the requested reports. You have marked a driver's license number for redaction in accordance with section 552.130(c) of the Government Code.¹ You have also marked a social security number for redaction in accordance with section 552.147 of the Government Code.² You claim the submitted 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

¹Section 552.130(c) authorizes a governmental body to redact a driver's license number under section 552.130(a)(1) of the Government Code without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

²Section 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. Gov't Code § 552.147(b).

Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

(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.

Fam. Code § 261.201(a). You state the submitted information is confidential under section 261.201 of the Family Code. We note, however, the submitted report was not used or developed in a child abuse or neglect investigation. Thus, the submitted report may not be withheld in its entirety under section 552.101 in conjunction with section 261.201(a)(2). However, we find portions of the submitted information reveal a report of child abuse under section 261.201(a)(1). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 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). Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a)(1). *See Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).*

Section 552.101 of the Government Code also 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. *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. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* 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. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records*

Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found information which either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld from public disclosure under common-law privacy. Open Records Decision Nos. 393 at 2 (1983), 339 (1982). Additionally, 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find the information we have marked is highly intimate or embarrassing of no legitimate public interest. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you seek to withhold is not highly intimate or embarrassing information of no legitimate public interest. Consequently, none of the remaining information at issue may be withheld under section 552.101 on the basis of common-law privacy.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 261.201(a)(1) of the Family Code and (2) common-law privacy. The city 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,

³We note the information being released contains the requestor's driver's license number, which is generally confidential under section 552.130 of the Government Code and social security number, which may generally be withheld under section 552.147 of the Government Code, to which she has a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the city receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) of the Government Code, discussed above, authorize the city to redact the driver's license number and social security number, respectively.

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 'Ana Carolina Vieira', with a long horizontal flourish extending to the right.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 457868

Enc. Submitted documents

c: Requestor
(w/o enclosures)