



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2012

Ms. Katherine A. Tapley
For City of Schertz
Fulbright & Jaworski, L.L.P.
300 Convent Street, Suite 2100
San Antonio, Texas 78205-3792

OR2012-10430

Dear Ms. Tapley:

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# 458239.

The Schertz Police Department (the "department"), which you represent, received a request for all reports involving a named individual, including records related to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. 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. *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. 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 courthouses 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. The requestor seeks all reports involving a named individual, as well as a specified report. The request for the specified report does not require the department to compile unspecified records, thus, the specified report does not implicate the named individual's right to privacy. We also note the remaining information does not list the named individual as a suspect, arrestee, or criminal defendant. Thus, the remaining information also does not implicate the privacy interests of the named individual. Accordingly, we conclude the department may not withhold any of the submitted information as a compilation of criminal history under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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). Upon review, we find the report submitted under Tab 3, and the related photographs, were used or developed in an investigation of alleged child abuse or child neglect. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). You have not indicated 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 report submitted as Tab 3, and the related photographs, are confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ Upon further review, we find you have not demonstrated any of the remaining information was used or developed in an investigation under chapter 261 of the

¹As our ruling is dispositive, we do not address your remaining argument against disclosure for this information.

Family Code. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the report submitted under Tab 4 relates to a pending criminal prosecution and release of the information would interfere with that prosecution. *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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable.

However, section 552.108 does not except from disclosure basic information about a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, information concerning an arrest and a sufficient portion of the narrative to include a detailed description of the offense. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold the information submitted under Tab 4 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency this state or another state or country. Gov’t Code § 552.130(a)(1). Accordingly, the department must withhold the driver’s license number we have marked under section 552.130 of the Government Code.²

Section 552.147 of the Government Code provides, “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Accordingly, the department may withhold the social security number we have marked under section 552.147 of the Government Code.³

²Section 552.130 of the Government Code permits a governmental body to redact a driver’s license number without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.130(c)–(e).

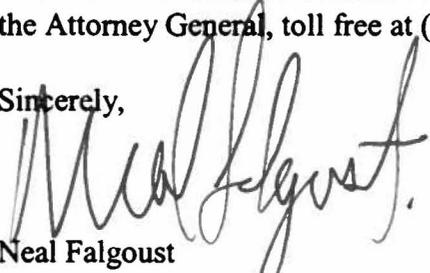
³We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov’t Code § 552.147(b).

In summary, the department must withhold the report submitted under Tab 3, and the related photographs, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the report submitted under Tab 4 under section 552.108(a)(1) of the Government Code. The department must withhold the driver's license number we have marked under section 552.130 of the Government Code. The department may withhold the social security number we have marked under section 552.147 of the Government Code. The remaining information 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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 458239

Enc. Submitted documents

c: Requestor
(w/o enclosures)