



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 11, 2012

Ms. Monique Auchey  
Records Custodian  
Leander Police Department  
705 Leander Drive  
Leander, Texas 78641

OR2012-10698

Dear Ms. Auchey:

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# 458498.

The Leander Police Department (the "department") received a request for all reports involving the requestor and a specified address, including the reports pertaining to two specified incidents. You state the department has released some of the requested information. 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 Code § 552.101. This section 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, records relating to routine traffic violations are not considered criminal history information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information).

You assert the present request, in part, requires the department to compile the criminal history of the requestor. However, we note the requestor has a right of access to information concerning himself that would otherwise be withheld to protect his privacy. *See id.* § 552.023(a) (person 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 individuals request information concerning themselves). Therefore, the department may not withhold any of the submitted information as a criminal history compilation of the requestor 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 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.

Fam. Code § 261.201(a), (k). You assert the submitted information is confidential under section 261.201(a) of the Family Code. Upon review, we agree some of this information was used or developed in the department's investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See 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 disabilities of minority removed for general purposes), 261.001(1) (defining "abuse" for purposes of chapter 261 of Family Code). We note the requestor is a parent of the alleged child victim at issue. However, the requestor 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 this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We find, however, you have not demonstrated that any of the remaining information is related to a report of alleged or suspected child abuse or neglect made under chapter 261, or was used or developed in an investigation under chapter 261. Thus, the department may not withhold any of this information under section 552.101 in conjunction with section 261.201(a). As you raise no other exceptions to the disclosure of the remaining information, the department must release it.<sup>1</sup>

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),

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<sup>1</sup>The information being released contains the requestor's motor vehicle record information, to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code §§ 552.023, .130; ORD 481 at 4. However, section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). We also note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas license plate number under section 552.130(a)(2), without the necessity of requesting an attorney general decision. Thus, if the department receives another request for this same information from a different requestor, section 552.130(c) and Open Records Decision No. 684 authorizes the department to redact the requestor's driver's license number and Texas license plate numbers, respectively.

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 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/dls

Ref: ID# 458498

Enc. Submitted documents

c: Requestor  
(w/o enclosures)