



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2012

Ms. Teresa J. Brown
Senior Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2012-15073

Dear Ms. Brown:

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# 465800 (#PAIK070212).

The Plano Police Department (the "department") received a request for information pertaining to a specified address and five named individuals for a specified period of time.¹ You state you have released some of the requested information. You indicate you are withholding certain social security numbers under section 552.147(b) of the Government Code.² You claim that 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication

¹We note the department sought and received clarification of the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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. See Gov't Code § 552.147(b).

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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The request, in part, seeks all records pertaining to the named individuals. This portion of the request requires the department to compile the named individuals' criminal history. Therefore, to the extent the department maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 in conjunction with common-law privacy as a compilation of the named individuals' criminal history. However, we note one of the named individuals is the requestor. As such, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to herself that would otherwise be withheld to protect her privacy. *See Gov't Code § 552.023(a)* (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”). Therefore, information relating to the requestor may not be withheld from the requestor as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. However, to the extent that the department maintains any law enforcement records depicting the other named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that you have submitted information which does not list the individuals who are not the requestor as a suspect, arrestee, or criminal defendant or involve the specified address. We find this information does not implicate any individual's right to privacy for purposes of *Reporters Committee*. Accordingly, we will address your argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as 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). Upon review, we agree some of the information at issue was used or developed by the department in investigations under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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). Although the requestor is a parent of the child victims listed in the reports at issue, the requestor is alleged to have committed the alleged child abuse or neglect in some of the reports. Thus, the requestor does not have a right of access to this information, which we have marked, under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold the information we have marked from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.

However, we also note the requestor is a parent of the child victims named in some of the remaining reports at issue and is not accused of committing the alleged or suspected abuse or neglect. Accordingly, the department may not withhold from this requestor information concerning these reports that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). We further find you have not demonstrated that any of the remaining information at issue 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).

In summary, to the extent that the department maintains any law enforcement records depicting the named individuals other than the requestor as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. The remaining information must be released.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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 465800

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to some of the information being released pursuant to section 261.201(k) of the Family Code. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.