



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

Mr. B. Chase Griffith
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-16224

Dear Mr. Griffith:

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# 467496 (ORR# 10-5799).

The McKinney Police Department (the "department"), which you represent, received a request for all reports: (1) involving the requestor and a named individual from a specified time period; (2) related to a specified address; and (3) made by the named individual. You inform us that the department has released some of the responsive information. You claim 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 if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. United States 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 assert the request for information, in part, requires the department to compile unspecified records concerning the named individual. However, after reviewing the request, we find the requestor is seeking specific reports involving herself and the named individual. Therefore, the submitted information does not constitute a criminal history compilation and none of this information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the information pertaining to case number 12-000501 relates to a pending criminal investigation. Based on your representation and our review, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. *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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) of the Government Code is applicable to the information pertaining to case number 12-000501.

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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. As noted above, a governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You inform us that some of the remaining information pertains to a closed case that ended in a result other than conviction or deferred adjudication. We note, however, the information at issue consists of multiple reports and you have not specified which of these reports is closed. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to this information. *See id.* § 552.301(e)(1)(A), .301(e)(2) (governmental body must label information to indicate which exceptions apply to which parts of information). Accordingly, the department may not withhold the information at issue under section 552.108(a)(2) of the Government Code.

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 536 S.W.2d at 186-87; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold the information pertaining to case number 12-000501 under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses information protected 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). You represent some of the remaining information relates to an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. 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), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261). Upon review, we agree portions of the information at issue, which we have marked, fall within the scope of section 261.201(a). We note that although the requestor is a parent of the child victim at issue, the requestor is alleged to have

committed the suspected abuse or neglect. Thus, the information we have marked may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, we find you have failed to demonstrate how the remaining information at issue, which concerns an assault allegedly committed against an adult victim, is related to an investigation of alleged child abuse or neglect for purposes of chapter 261 of the Family Code. Accordingly, section 261.201(a) does not apply to this information, and it may not be withheld under section 552.101 on that basis.

In summary, with the exception of basic information, which must be released, the department may withhold the information pertaining to case number 12-000501 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. As no further exceptions to disclosure are raised for the remaining information, the department must release it.¹

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

¹We note the requestor has a special right of access to some of the information being released in this instance. 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.

Ref: ID# 467496

Enc. Submitted documents

c: Requestor
(w/o enclosures)