



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2012

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

OR2012-16491

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# 468140 (Plano Reference No. SERA072512).

The Plano Police Department (the "department") received a request for information regarding a specified incident. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.137 and 552.147 of the Government Code.¹ 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 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:

¹Although you do not raise sections 552.130 and 552.137 of the Government Code in your brief, you have marked portions of the submitted information under these exceptions. Thus, we understand you to raise sections 552.130 and 552.137. Additionally, although you have marked social security numbers under section 552.101, we note that section 552.147 is the proper exception to raise for this information. See Gov't Code § 552.147(a).

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). We note the submitted information was used or developed in an investigation of alleged child abuse. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code), 101.003(a) (defining “child” as person under eighteen years of age who is not and has not been married and who has not had the

disabilities of minority removed for general purposes). Accordingly, we find the submitted information is subject to section 261.201. However, we note the requestor is the mother of a child victim named in the report, and the requestor is not alleged to have committed the abuse. Therefore, the department may not withhold the submitted information from the requestor under section 261.201(a). *See id.* § 261.201(k).

Section 261.201(l)(1), however, states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). In this instance, we are unable to determine whether the requestor is a parent, managing conservator, or legal representative of the other child victims named in the report. Accordingly, we will rule conditionally. To the extent the requestor is not a parent, managing conservator, or legal representative of the other three children named in the report, the department must withhold their identities, which you have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. To the extent the requestor is a parent, managing conservator, or legal representative of the other three children, their identities may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code.

Additionally, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). We note portions of the information you have marked do not identify the reporting party for the purposes of section 261.201(l)(3), and may not be withheld on that basis. Therefore, with the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Further, section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Therefore, we will consider whether any of the remaining information is excepted under the Act.

Section 552.101 also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled

to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the information we have marked consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. This office has found 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). 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 and of no legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). We note a portion of the information you have marked under section 552.130 does not consist of motor vehicle record information. Therefore, with the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.130.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We note you have marked the requestor's e-mail address, to which the requestor has a right of access pursuant to section 552.137(b). *See id.* § 552.137(b). Therefore, the department may not withhold the requestor's e-mail address, which we have marked for release, under section 552.137. The department must withhold the remaining e-mail address you have marked under section 552.137, unless the owner affirmatively consents to its release.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code

§ 552.147(a). Therefore, the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, to the extent the requestor is not a parent, managing conservator, or legal representative of the other three children named in the report, the department must withhold their identities, which you have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. With the exception of the information we have marked for release, the department must withhold: the information you have marked, and the additional information we have marked, under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code; the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code; the information we have marked under section 552.101 in conjunction with common-law privacy; the information you have marked, and the additional information we have marked, under section 552.130; the e-mail address you have marked under section 552.137 unless the owner consents to its release; and the social security numbers you have marked under section 552.147. The remaining information must be released to the requestor.²

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

²We note the requestor has a special right of access to the information the department is releasing. See Fam. Code § 261.201(k). 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# 468140

Enc. Submitted documents

c: Requestor
(w/o enclosures)