



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 11, 2013

Mr. Art Pertile  
For City of Stafford  
Olson & Olson, L.L.P.  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019

OR2013-00732

Dear Mr. Pertile:

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# 476246 (Stafford Ref. Nos. COS12-043A- COS12-043J).

The Stafford Police Department (the "department"), which you represent, received a request for all reports involving a named individual, including a specified incident report. You state the department will redact social security numbers under section 552.147(b) of the Government Code.<sup>1</sup> You state you will withhold the e-mail addresses you have marked pursuant to the previous determination issued in Open Records Decision No. 684 (2009).<sup>2</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>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. See Gov't Code § 552.147(b).

<sup>2</sup>Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

<sup>3</sup>Although you raise section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise in this instance because the department does not hold the information at issue in an employment capacity.

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) (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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all reports involving the named individual. Thus, this portion of the request requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the individual's right to privacy. However, we find the part of the request that seeks information pertaining to a specified case does not implicate the named individual's privacy interests. You submitted COS12-043C, which was specifically requested and, therefore, may not be withheld as part of a criminal history compilation. However, to the extent the department maintains law enforcement records other than the specified report depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is also not part of a criminal history compilation and may not be withheld under section 552.101 on this basis. Therefore, we will consider your arguments against disclosure of the information contained in COS12-043C, as well as for the information that does not depict the named individual as a suspect, arrestee, or criminal defendant.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 agree COS12-043C was used or developed in an investigation under chapter 261. *See id.* §§ 261.001(1),(4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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). Therefore, COS12-043C is within the scope of section 261.201(a). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude COS12-043C is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

You contend some of the submitted reports are protected by common-law privacy. As previously discussed, common-law privacy protects information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including information related to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.* at 683. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORDs 393, 339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld). Upon review, we find COS12-043A and COS12-043I pertain to alleged sexual assaults. Additionally, the requestor knows the identity of the alleged victim of the sexual assaults. Thus, withholding only the victim’s identifying information from the requestor would not preserve the victim’s common-law right to privacy. Accordingly, to protect the victim’s privacy, we agree the department must withhold COS12-043A and COS12-043I in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup> We have also marked additional information in the remaining information that is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must also withhold the

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

additional marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code applies to information pertaining to peace officers that the department does not hold in an employment context and provides, in part, the following:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). To the extent the information we have marked consists of a licensed peace officer's family member information and the peace officer elects to withhold access to this information in accordance with section 552.1175(b), the department must withhold the marked information under section 552.1175 of the Government Code.

You state you will redact the marked driver's license information under section 552.130(a)(1) pursuant to section 552.130(c) of the Government Code.<sup>5</sup> You also mark additional information under section 552.130. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Therefore, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of the specified report, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee,

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<sup>5</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

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 COS12-043C under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. The department must withhold COS12-043A and COS12-043I, as well as the additional information we have marked, 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 552.1175 of the Government Code if the information pertains to a licensed peace officer and he elects to restrict access to his information. The department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 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](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,



Jasmine D. Wightman  
Assistant Attorney General  
Open Records Division

JDW/dls

Ref: ID# 476246

Enc. Submitted documents

c: Requestor  
(w/o enclosures)