



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 17, 2013

Ms. Rachel L. Lindsay  
Counsel for the Town of Little Elm  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2013-01037

Dear Ms. Lindsay:

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# 476564.

The Little Elm Police Department (the "department"), which you represent, received a request for all 9-1-1 call recordings, call sheets, and police reports involving the requestor and individuals with a specified last name, and a specified address during the year 2012. 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 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 elements of the 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. 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.

In this instance, the requestor seeks access to unspecified law enforcement records relating to himself and individuals with a specified last name. Thus, this request requires the department to compile these individuals' criminal histories and thereby implicates their privacy interests. We note the requestor has a special right of access under section 552.023 of the Government Code to any information that would be otherwise excepted from public disclosure to protect his own privacy. *See Gov't Code § 552.023* (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). However, to the extent the department maintains any law enforcement records in which any of the other named individuals is listed 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 you have submitted records in which the named individuals are not listed as suspects, arrestees, or criminal defendants. These records do not constitute a compilation of these individuals' criminal histories and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

[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 the information related to case number 12-000776 was used or developed during a child abuse investigation conducted by the department. *See id.* § 261.001(1) (defining "abuse" for purposes of section 261.201); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261.201). Thus, we find the information related to case number 12-000776 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, the department must withhold the information related to case number 12-000776 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information concerning case number 12-000681 relates to a pending criminal case. Based on your representation and our review, we conclude section 552.108(a)(1) is generally applicable to the submitted information. 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold the information concerning case number 12-000681 pursuant to section 552.108(a)(1) of the Government Code.

In summary, to the extent the department maintains any law enforcement records in which any of the named individuals, other than the requestor, is listed 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 related to case number 12-000776 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the information concerning case number 12-000681 pursuant to section 552.108(a)(1) of the Government Code.

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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,



**Jennifer Burnett**  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 476564

Enc. Submitted documents

c: Requestor  
(w/o enclosures)