



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2013

Ms. Monique Auchey
Records Custodian
Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2013-09867

Dear Ms. Auchey:

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# 490007.

The Leander Police Department (the "department") received a request for any incident reports involving a named individual from the year 2000 to the date of the request. You claim that 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. 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 common-law right to 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 met. *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, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, records relating to routine traffic violations are not considered criminal history information. *See id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Additionally, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis.

You state the present request requires the department to compile unspecified law enforcement records concerning the named individual, thus implicating this individual's right to privacy. However, upon review of the submitted information, we find you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant, or that pertains to routine traffic violations. This information does not implicate the privacy interests of the individual. Accordingly, the department may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy as a criminal history compilation. However, we will address your remaining arguments against disclosure of this information.

Section 552.101 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.

Fam. Code § 261.201(a). Upon review, we find report number LPD100886 was used or developed in an investigation by the department of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (defining "abuse" for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 of the Penal Code); *see also* Penal Code § 22.011 (defining "child" for purposes of sexual assault of a child as person under 17 years of age). You have not indicated the department has adopted a rule that governs the

release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude report number LPD100886, which we have marked, is confidential under section 261.201(a) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code on that basis.

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 requested information. *See id.* §§ 552.108(a)(1), .301 (e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining submitted information relates to pending investigations by the department. Based on your representation, we agree release of the information at issue 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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to the remaining submitted information.

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

We note the information you have marked for release contains motor vehicle record information subject to section 552.130 of the Government Code. 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). Therefore, the department must withhold the information we have marked under section 552.130.

In summary, the department must withhold report number LPD100886 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in the information you have marked for release under section 552.130 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.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 490007

Enc. Submitted documents

c: Requestor
(w/o enclosures)