



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2013

Ms. Amy Bockes
City Secretary
The City of Oak Point
100 Naylor Road
Oak Point, Texas 75068

OR2013-10844

Dear Ms. Bockes:

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# 493400 (PIR-2013-04-040).

The City of Oak Point (the "city") received a request for all reports from a specified time period concerning the requestor, her two minor children, and a named individual, including specified reports.¹ You inform us the city does not have some of the specified reports.² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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,

¹You indicate the city sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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) (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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

In this instance, the requestor, in part, seeks access to unspecified law enforcement records involving herself, her two minor children, and the named individual. Thus, this part of the request requires the department to compile criminal histories and thereby implicates the privacy interests of these individuals. However, we note the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to herself and her two minor children that would otherwise be withheld to protect their privacy. *See Gov't Code § 552.023(a)* ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, information relating to the requestor and her two minor children may not be withheld from the requestor as a compilation of criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. However, other than the specified reports, to the extent the city maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also 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:

(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 assert the information at issue was used or developed in investigations under chapter 261. Upon review, we agree some of the information at issue was used or developed in an investigation under chapter 261. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code); *see also 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). Accordingly, we conclude this information, which we have marked, is within the scope of section 261.201(a). We note, however, the requestor is a parent of the alleged child victim at issue, and the requestor is not the individual alleged to have committed the abuse. Therefore, the city may not withhold the information at issue from the requestor under section 261.201(a) of the Family Code. *See id.* § 261.201(k). Accordingly, as no further exceptions to the disclosure of this information are raised, the city must release it to the requestor pursuant to section 261.201(k) of the Family Code. *See id.* Furthermore, we find you have failed to demonstrate how any of the remaining information consists of a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.130(a)(1) of the Government Code provides that information relating to a motor vehicle operator’s or driver’s license or permit issued by any agency of this state or another state or country is excepted from public release.³ *See Gov’t Code* § 552.130(a)(1). We note

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See Open Records Decision* Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 protects personal privacy. Thus, the requestor has a right of access to her own driver's license information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); *see also* ORD 481 at 4. However, the city must withhold the driver's license information we have marked under section 552.130(a)(1) of the Government Code.

In summary, other than the specified reports, to the extent the city maintains any information that depicts the other named individual as a suspect, arrested person, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the driver's license information we have marked under section 552.130(a)(1) of the Government Code. The city must release the remaining information.⁴

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 493400

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a special right of access to some of the information being released. *See* Fam. Code § 261.201(k); Gov't Code § 552.023(a); *see also* ORD 481 at 4. Accordingly, if the city receives another request for this information from a different requestor, then the city must again seek a decision from this office.