



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2013

Mr. Joe Torres, III
Counsel for the City of Alice
Attorney at Law
P.O. Box 3229
Alice, Texas 78333

OR2013-14645

Dear Mr. Torres:

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# 497091.

The Alice Police Department (the "department"), which you represent, received a request for all records filed by or against the requestor's client during a specified time period. 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. *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.

You assert the present request requires the department to compile the criminal history of an individual. In this instance, the requestor asks for all information concerning her client. Thus, the requestor has a right of access to her client's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves or person for whom they are authorized representatives). Further, we note you have submitted information in which the requestor's client is not depicted as a suspect, arrestee, or criminal defendant. Therefore, the department may not withhold any of the submitted information as a criminal history compilation under section 552.101 of the Government Code under common-law privacy.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential, such as section 261.201(a) of the Family Code. Section 261.201(a) provides in pertinent 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.

(1) 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:

...

(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), (1)(2)-(3). Upon review, we find report numbers 2013004551 and 2013004707 were used or developed in investigations of alleged or suspected child abuse. *See id.* § 261.001 (1) (defining “abuse” for purposes of Family Code chapter 261); *see also* Penal Code § 22.04 (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Accordingly, we conclude this information is within the scope of section 261.201(a). We note, however, the requestor is the representative of the parent of the alleged child victims at issue. Furthermore, the requestor’s client is not the individual alleged to have committed the alleged abuse or neglect. Therefore, the department may not withhold the information at issue from the requestor under section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(k).

Section 261.201(1)(3) of the Family Code provides that 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 section 261.201(k), the identity of the person who made the report of alleged child abuse or neglect must be redacted. *Id.* § 261.201(1)(3). However, we note in report number 2013004551, the reporting party is the requestor’s client. Thus, we find to construe section 261.201(1)(3) to require a governmental body to withhold the identifying information of a reporting party from a requestor with a section 261.201(k) right of access who is the authorized representative of the reporting party would lead to an absurd result that the legislature could not have intended. *See Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). Therefore, the department may not withhold the identity of the reporting party in report number 2013004551 under section 552.101 on that ground. However, the department must withhold identifying information of the reporting party in report number 2013004707, which we have marked, pursuant to section 261.201(1)(3) of the Family Code. Further, the department must redact any information that is otherwise excepted from

required disclosure under the Act pursuant to section 261.201(l)(2). Fam. Code § 261.201(l)(2). We note the information at issue contains information subject to section 552.130 of the Government Code.¹ Accordingly, we will address the applicability of section 552.130, as well as your arguments under sections 552.101 and 552.108 of the Government Code, to report numbers 2013004551 and 2013004707 and the remaining information.

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You generally raise section 552.108 for the remaining information. A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the information at issue pertains to specific ongoing criminal investigations or prosecutions, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1). A governmental body claiming subsection 552.108(a)(2) or subsection 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2), (b)(2). You have not explained how the information at issue pertains to any specific investigations that concluded in final results other than convictions or deferred adjudications. Thus, you have failed to demonstrate the applicability of either subsection 552.108(a)(2) or subsection 552.108(b)(2). Subsection 552.108(a)(3) is also inapplicable as the information at issue does not relate to a threat against a police officer. *See id.* § 552.108(a)(3). Lastly, you do not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the department may not withhold any of the information at issue under section 552.108 of the Government Code.

You claim the remaining information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two part test discussed above. We note the type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating 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. 540 S.W.2d at 683. This office has held common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find some of the remaining information is highly intimate or embarrassing information and not of legitimate public interest. However, as previously noted, the requestor is the authorized representative of the parent of the child victims whose privacy interests are at issue. Thus, the requestor has a right of access to information pertaining to her client's children that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4. Further, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, no portion of the remaining information may be withheld from this requestor under section 552.101 on the basis of 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 or permit issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). We note the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b); ORD 481 at 4. Upon review, we find the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked in report number 2013004707 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.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.texasattorneygeneral.gov/open/>

²We note the remaining information contains social security numbers of individuals other than the requestor's client. 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 under the Act. Gov't Code § 552.147(b). We note, however, the requestor has a right of access to her client's social security number. *See generally id.* § 552.023(b). Further, we note because the requestor has a special right of access to the information being released in this instance, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. *See* Fam. Code § 261.201(k); Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

[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,

A handwritten signature in black ink that reads "Kathleen J. Santos". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 497091

Enc. Submitted documents

c: Requestor
(w/o enclosures)