



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 11, 2013

Ms. Samantha Dyal  
Counsel for the City of Schertz  
Fulbright & Jaworski, L.L.P.  
300 Convent Street, Suite 2100  
San Antonio, Texas 78205-3792

OR2013-15810

Dear Ms. Dyal:

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# 499069.

The Schertz Police Department (the "department"), which you represent, received two requests from the same requestor for all reports related to two named individuals and all reports related to a specified address during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. This office has found 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The first request seeks all reports related to two named individuals. This request requires the department to compile unspecified law enforcement records concerning the named individuals and implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, you have submitted information that does not list the named individuals as suspects, arrestees, or criminal defendants. We find this information does not implicate the privacy interests of the named individuals. Accordingly, we will address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes such as section 261.201 of the Family Code. Section 261.201 provides, in pertinent part, as follows:

(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). You inform us report numbers 2010-22551 and 2011-34588 relate to investigations of alleged or suspected child abuse conducted by the department. *See id.* § 261.001(1)(E) (definition of "abuse" for purposes of chapter 261 of the Family Code includes indecency with a child under Penal Code section 21.11 and aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code §§ 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.021 as person under 17 years of age), 21.11(a) (defining "child" for purposes of Penal Code section 21.11 as a person under 17 years of age). You do not indicate 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 numbers 2010-22551 and 2011-34588 are confidential pursuant to section 261.201 of the Family Code, and the department must withhold them under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

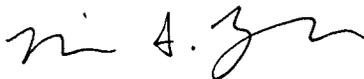
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we agree the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.<sup>1</sup>

In summary, to the extent the department maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report numbers 2010-22551 and 2011-34588 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and the motor vehicle record information you marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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](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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

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<sup>1</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

Ref: ID# 499069

Enc. Submitted documents

c: Requestor  
(w/o enclosures)