



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

Mr. Jason M. Rammel
Counsel for the City of Hutto
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664

OR2013-17979

Dear Mr. Rammel:

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# 502627.

The City of Hutto (the "city"), which you represent, received a request for information pertaining to a specified address and four named individuals. You state the city will release some of the requested information. 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information (1) containing 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 satisfied. *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.

The present request seeks all information pertaining to named individuals. This request requires the city to compile the named individuals' criminal histories and implicates the privacy of the named individuals. Therefore, to the extent the city maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the city 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 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state Exhibit C was used or developed in an investigation of alleged or suspected child abuse. Upon review, we find this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes).

As you do not indicate the city has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine Exhibit C is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). Therefore, the city must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, to the extent the city maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive, flowing style.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/dls

Ref: ID# 502627

Enc. Submitted documents

c: Requestor
(w/o enclosures)