



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2013

Mr. Steven Meyer  
Assistant City Attorney  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2013-18347

Dear Mr. Meyer:

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# 503136 (APD No. 12378-080213).

The Arlington Police Department (the "department") received a request for information pertaining to a specified police report. 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. Section 552.101 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 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.

...

(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.

(l) 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information; [and]

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find the submitted information was used or developed by the department in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). Thus, the submitted report falls within the scope of section 261.201 of the Family Code. However, upon review, we find the requestor is the child victim listed in the submitted report and is now at least eighteen years of age. *See* Fam. Code § 261.201(k). Therefore, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* Subsection 261.201(l)(1), however, states the personally identifiable information of a victim or witness under the age of eighteen must be

withheld. *Id.* § 261.201(1)(1). Accordingly, the department must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with subsection 261.201(1)(1) of the Family Code. In addition, subsection 261.201(1)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your remaining argument against disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.

This office has also found the identities of victims of sexual abuse are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In Open Records Decision No. 393, this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* ORD 339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld). You argue the remaining information must be withheld in its entirety to protect the privacy of the victim. Upon review, we find the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor is the victim. Thus, the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department may not withhold the

remaining information in its entirety from this requestor under section 552.101 on the basis of common-law privacy. However, we find the information we have marked pertaining to individuals other than the requestor satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note, some of the remaining information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 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 [or] or personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.” Gov’t Code § 552.130(a)(1), (3). Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>2</sup>

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsection 261.201(l)(1) of the Family Code and common-law privacy. The department must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor.<sup>3</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

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<sup>1</sup>The 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).

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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 Id.* § 552.130(d), (e).

<sup>3</sup>We note the requestor has a special right of access to the information the department is releasing. *See* Fam. Code § 261.201(k); *see also* Gov’t Code § 552.023(a). Because such information is confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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 cursive script that reads "Lana L. Freeman".

Lana L. Freeman  
Assistant Attorney General  
Open Records Division

LLF/eb6

Ref: ID# 503136

Enc. Submitted documents

c: Requestor  
(w/o enclosures)