ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2014

Ms. Rebecca Hendricks Brewer
Counsel for the City of Wylie
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2014-07189

Dear Ms. Brewer:

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# 521452.

The Wylie Police Department (the "department"), which you represent, received a request for information pertaining to the requestor's client, another named individual, or a specified address since January 1, 2010, including a specified incident. The department claims the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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 that (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 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 requestor asks for all information held by the department concerning a named individual. Upon review, we find the requestor is seeking specific domestic violence incident reports involving the requestor's client and the named individual. Accordingly, the department may not withhold the submitted domestic violence incident report involving the requestor's client and the named individual under section 552.101 on the basis of the named individual's privacy interests in a compilation of her criminal history. Nevertheless, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, in addition to the submitted domestic violence report, you have submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant. Therefore, this information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

> (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:
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> > (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.
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> . . .
>
> (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). Upon review, we find some of the information at issue was used or developed in the investigation of alleged or suspected child abuse. *See id.* §§ 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 disabilities of minority removed for general purposes), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). Accordingly, we determine this information is within the scope of section 261.201 of the Family Code. Pursuant to section 261.201(k), an investigating entity may not withhold records subject to section 261.201 from a parent who is not suspected of committing the abuse. *See id.* § 261.201(k). Although the requestor represents a parent of the child victim at issue in this report and this parent is not alleged to have committed the alleged abuse, the child victim is now an adult. Thus, we find the requestor does not have a right of access to this report under section 261.201(k). *See id.* You do not indicate the department has adopted a rule governing the release of this type of information. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.[1]

You assert the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us some of the remaining information, which you have marked under section 552.108(a)(2), pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

You assert the remaining documents are excepted from disclosure under section 552.108(a)(1), which excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the information you have marked under section 552.108(a)(1) relates to a pending criminal investigation. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates

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[1]As our ruling is dispositive, we do not address your other arguments to withhold this information.

law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is applicable to the documents you have marked on that ground.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code and the information you have marked under section 552.108(a)(1) of the Government Code.[2]

To conclude, the department must withhold any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which the department must release, the department may withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code and the information you have marked under section 552.108(a)(1) of the Government 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

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[2]As our ruling is dispositive, we do not address your other arguments to withhold this information.

Ref: ID# 521452

Enc. Submitted documents

c: Requestor
(w/o enclosures)