



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 12, 2014

Ms. Linda Pemberton  
Paralegal  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2014-14046

Dear Ms. Pemberton:

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# 532472 (ID# W013551).

The City of Killeen (the "city") received a request for all records involving two named individuals at a specified address during two specified months. You state you have released some information to the requestor. 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. Common-law privacy 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) (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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor asks the city for all records involving two named individuals, thus implicating these individuals' rights to privacy. We note, however, the requestor purports to be the authorized representative of one of the named individuals. In that case, the requestor would have a right of access under section 552.023 of the Government Code to any information the city would be required to withhold from the general public to protect this individual's 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 herself). As we are unable to determine whether the requestor is this individual's authorized representative, we will rule conditionally. If the requestor is not this individual's authorized representative, then to the extent the city maintains any information that depicts either named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is this individual's authorized representative, after reviewing the request and the submitted information, we find the requestor is seeking specific domestic violence reports involving both named individuals. As such, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to the named individual she purports to represent that would otherwise be withheld to protect this individual's privacy. *See Gov't Code § 552.023*. Moreover, because the requestor is seeking specific domestic violence reports involving the named individual she purports to represent and the other named individual, the request does not implicate the other named individual's right to privacy, and the submitted domestic violence reports involving the two named individuals may not be withheld under section 552.101 on the basis of common-law privacy. In that instance, we will address the applicability of the exceptions you claim.

Section 552.101 of the Government Code also encompasses 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 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:

...

(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), (l)(2), (3). Upon review, we find call for service numbers 1629801 and 1650510, as well as incident report number 13-013026, were used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). Accordingly, we find this information is generally confidential under section 261.201 of the Family Code. We note the requestor purports to be the authorized representative of a parent of the child victim listed in the information at issue. However, the individual the requestor claims to represent is alleged to have committed the suspected abuse or neglect in call for service number 1629801 and incident report number 13-013026. Therefore, the requestor does not have a right of access to this information. *See id.* § 261.201(k). Accordingly, the city must withhold call

for service number 1629801 and incident report number 13-013026 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup>

However, the individual the requestor claims to represent is not alleged to have committed the suspected abuse or neglect call for service number 1650510. Therefore, if the requestor is this individual's authorized representative the city may not withhold call for service number 1650510 from this requestor under section 261.201(a). *See id.* § 261.201(k). In that instance, section 261.201(l)(3) of the Family Code provides the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the city must withhold the identifying information of the reporting party we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Further, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You claim call for service number 1650510, along with the remaining information, is subject to sections 552.101 and 552.108 of the Government Code. Accordingly, we will address sections 552.101 and 552.108 for call for service number 1650510, as well as for the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(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 id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state call for service numbers 1630175 and 1650510 relate to concluded investigations conducted by the city’s police department (the “department”). You state the department does not anticipate filing any charges in these cases in the future and the cases did not result in conviction or deferred adjudication. Thus, we find the city has demonstrated call for service numbers 1630175 and 1650510 deal with the detection, investigation, or prosecution of crime in relation to closed investigations that did not result in conviction or deferred adjudication.

We note, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing

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<sup>1</sup>Because our ruling is dispositive as to this information, we do not address your remaining argument against its disclosure.

types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information the city may withhold call for service numbers 1630175 and 1650510 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

We understand you to claim the basic information is excepted from disclosure in its entirety under section 552.101 of the Government Code. As noted above, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Although you argue the basic information should be withheld in its entirety, you have not demonstrated, and the submitted information does not reflect, this is a situation in which all of the basic information must be withheld on the basis of common-law privacy. However, we find some of the basic information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate any of the remaining basic information is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the remaining basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, if the requestor is not the authorized representative of one of the named individuals, then to the extent the city maintains any information that depicts either named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is this named individual's authorized representative, the city (1) must withhold call for service number 1629801 and incident report number 13-013026 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) must withhold the identifying information of the reporting party we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code; (3) may withhold call for service numbers 1630175 and 1650510, with the exception of basic information, under section 552.108(a)(2) of the Government Code; (4) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (5) must release the remaining basic information in call for service numbers 1630175 and 1650510.

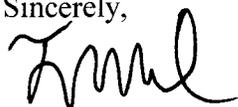
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<sup>2</sup>Because our ruling is dispositive as to this information, we do not address your remaining argument against its disclosure.

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,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 532472

Enc. Submitted documents

c: Requestor  
(w/o enclosures)