



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2014

Ms. Lisa D. Mares
Counsel for the Town of Little Elm
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-17449

Dear Ms. Mares:

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# 538060.

The Town of Little Elm (the "town"), which you represent, received a request for information pertaining to two specified incidents and any other records involving two named individuals. The town claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the town claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which 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 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 present request, in part, seeks all reports pertaining to the named individuals. This aspect of the request requires the town to compile the named individuals' criminal history and implicates the privacy of the named individuals. Therefore, to the extent the town maintains unspecified law enforcement records, other than information pertaining to the specified incidents, listing the named individuals as a suspect, arrestee, or criminal defendant, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the town has submitted documents relating to the incidents specified by the requestor. This information is not part of a compilation of the named individuals' criminal history, and the town may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to 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, 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). Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *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 the disabilities of minority removed for general

purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). The town states it has not adopted a rule that governs the release of this type of information. Based on the town’s representation and on our review, we determine the information at issue is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the town must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we find the town has failed to demonstrate the remaining responsive information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 or how the information was used or developed in an investigation of alleged or suspected child abuse or neglect. Therefore, the town may not withhold the remaining responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

As stated above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects the specific types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the town maintains unspecified law enforcement records, other than information pertaining to the specified incidents, listing the named individuals as a suspect, arrestee, or criminal defendant, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town must release the remaining responsive information.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 538060

Enc. Submitted documents

c: Requestor
(w/o enclosures)