



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2014

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2014-22053

Dear Ms. White:

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# 545754.

The Town of Flower Mound (the "town"), which you represent, received a request for all records pertaining to the three named individuals. You state the town will withhold motor vehicle record information subject to section 552.130(c) of the Government Code, information subject to Open Records Decision No. 684 (2009), and social security numbers subject to section 552.147(b) of the Government Code.¹ 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

¹Section 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. 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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general opinion. *See* ORD 684. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. Gov't Code § 552.147(b).

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 elements of this test must be established. *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. 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.

You claim the present request requires the town to compile the named individuals' criminal history and implicates the named individuals' right to privacy. However, we note the requestor is a social worker, who has provided a signed authorization form from one of the individuals named in the request. Further, we note the two remaining individuals named in the request are the minor children of that individual. Therefore, the requestor is acting as the authorized representative of the named individual and his minor children and has a right of access to otherwise private information pertaining to the named individuals pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Additionally, we note you have submitted information that does not depict any of the named individuals as suspects, arrestees, or criminal defendants. Accordingly, the town may not withhold any portion of the submitted information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find you have failed to demonstrate any of the remaining information that does not pertain to the three individuals named in the request is highly intimate or embarrassing. Thus, none of the remaining submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential 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 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 . . . 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[.]

Fam. Code § 261.201(a), (k), (l)(2). You inform us the submitted information contains references to records that 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 disabilities of minority removed for general purposes). The submitted information consists of several separate investigations conducted by the town’s police department (the “department”) and the Child Protective Services Division of the Texas Department of Family and Protective Services (“CPS”). Based on your representation and our review, we find the submitted information is subject to section 261.201(a) of the Family Code. We note section 261.201(k) states the investigating agency must release information

subject to section 261.201(a) to a parent of the child who was the subject of the alleged or suspected abuse or neglect, unless this person is alleged to have committed the abuse or neglect. *See id.* § 261.201(k). In this instance, section 261.201(k) is not applicable to the investigations conducted by CPS because the department is not the investigating agency. Thus, the CPS investigations are generally confidential under section 261.201(a) of the Family Code.

However, with regard to the investigations conducted by the department, the requestor is the authorized representative of a parent of the child victims named in report number 13030868, and is not alleged to have committed the abuse in this report. Therefore, the town may not withhold report number 13030868 from the requestor under section 261.201(a). *See id.* Although the requestor is the authorized representative of the father of the child victim in report number 13006463, the father was suspected of committing the alleged or suspected abuse or neglect. Therefore, the requestor does not have a right of access to this information under section 261.201(k). *See id.* Accordingly, report number 13006463 is confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 261.201 provides, however, that information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.” Gov’t Code § 411.1285(a); *see* Fam. Code ch. 203 (governing administration of domestic relations offices). Additionally, section 411.087 of the Government Code provides, in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). “Criminal history record information” means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal

charges and their dispositions.” *Id.* § 411.082(2). Thus, a domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

The requestor states she has been appointed by a court to complete a social study with regard to the custody of two of the individuals named in the request. *See* Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Therefore, if the town determines the information confidential under section 261.201 of the Family Code is related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the town must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and withhold the remaining information under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. If the town determines either the information at issue is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or disclosure of the information at issue is not consistent with the Family Code, the town must withhold the information in its entirety under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986); Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5 (1986).

In summary, the town must release report number 13030868 to the requestor.² If the town determines the information we have found to be confidential under section 261.201 of the Family Code is related to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the town must make the CHRI available to the requestor and withhold the remaining information at issue under section 552.101 of

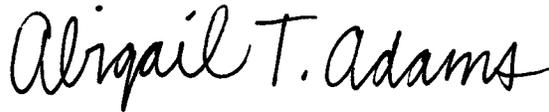
²We note the requestor has a right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the town receives another request for this same information from a different requestor, the town must again seek a ruling from this office.

the Government Code in conjunction with section 261.201 of the Family Code. The town must withhold the information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code in its entirety if the town determines either that the report is not related to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code or that disclosure of the information is not consistent with 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 "Abigail T. Adams". The signature is written in a cursive style with a large initial 'A'.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 545754

Enc. Submitted documents

c: Requestor
(w/o enclosures)