



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2008

Mr. Harold Willard  
Police Legal Advisor  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2008-03908

Dear Mr. Willard:

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# 305474.

The Lubbock Police Department (the "department") received a request for information pertaining to a named individual for a specified time period. You claim that the requested 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.

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request for information. The request seeks information created within the time period of September 1, 2005 through the day of the request. Accordingly, any information created outside of this time period is not responsive to the current request. The department need not release nonresponsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Section 552.101 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. This office has found that 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). We further find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You assert that the present request requires the department to compile the criminal history of a named individual. After reviewing the request and the submitted information, however, we believe the requestor is seeking, in part, specific domestic violence reports involving herself and the named individual. Accordingly, this portion of the request does not implicate privacy. However, to the extent the department maintains non-family violence reports in which the named individual is listed as a suspect, arrestee, or criminal defendant, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

The 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You claim that the information contained in Exhibit B is confidential under section 261.201. Upon review, we agree some of the information, which we have marked, was used or developed in an investigation of alleged or suspected abuse or neglect of a child. *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)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11 and sexual assault or

aggravated sexual assault under Penal Code sections 22.011 and 22.021). You have not indicated that the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, the department must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> See Open Records Decision No. 440 at 2 (1986) (predecessor statute). As to the remaining reports you seek to withhold under section 261.201, we find that you have failed to demonstrate how the information at issue relates to an investigation conducted under chapter 261 of the Family Code. Consequently, none of the remaining information contained in Exhibit B may be withheld under section 552.101 on this basis.

We now turn to your argument under section 552.108(a)(2) of the Government Code for the remaining submitted information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than 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 concluded in a final result other than a conviction or deferred adjudication. See *id.* You state that the submitted information pertains to closed criminal investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we conclude that section 552.108(a)(2) is applicable to the information we have marked.

However, we note that the submitted information reflects that report number 06-53186 concluded in deferred adjudication. Accordingly, section 552.108(a)(2) is not applicable to this report and it may not be withheld under section 552.108(a)(2).

With respect to the information we have marked under section 552.108, we note that this section does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. 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 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, which must be released, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code.

In summary, to the extent the department maintains non-family violence reports in which the named individual is listed as a suspect, arrestee, or criminal defendant, this information must be withheld under section 552.101 of the Government Code in conjunction with

---

<sup>1</sup>We note that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, a parent or guardian of the child may have the statutory right to review that file. See Fam. Code § 261.201(g).

common-law privacy. The department must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code. As you raise no further exceptions to disclosure, the remaining submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

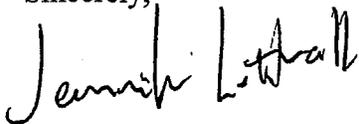
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and a distinct "L" for the last name.

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 305474

Enc. Submitted documents

c: Ms. Taneka Courtney  
2502 Weber, # 6108  
Lubbock, Texas 79404  
(w/o enclosures)