



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-02768

Dear Ms. Byles:

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# 336189 (City Request No. 0813-09).

The City of Fort Worth (the "city") received a request for all police reports since September 1, 2003, involving a specified address and two named individuals and two specific police reports. You state that the city has redacted Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code.¹ See Gov't Code §§ 552.147 (b), .301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that 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.

Initially, we note, and you acknowledge, the city failed to meet the fifteen-business-day deadline prescribed by section 552.301(e) of the Government Code in requesting this decision. See Gov't Code § 552.301(e). A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. See *id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797

¹ Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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). 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. U.S. 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). Furthermore, we find that 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 police reports involving two named individuals. We find this request for unspecified law enforcement records implicates the named individuals’ right to privacy. Therefore, to the extent the city maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 in conjunction with common-law privacy.

We note, however, that the requestor also seeks two specific police reports. The request for that information does not implicate the named individuals’ privacy rights and may not be withheld under section 552.101 on that basis. As you raise no further exceptions against the disclosure of report number 07-91229, it must be released. However, we will address your argument under section 552.101 for report number 07-89268.

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, audiotapes, videotapes 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 indicate that report number 07-89268 was used in an investigation of alleged child endangerment. *See id.* § 261.001 (defining “neglect” for purposes of chapter 261 of the Family Code). Upon review, we find that this report falls within the scope of section 261.201. Additionally, you have not indicated that the city has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, 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). The city must withhold report number 07-89268 under section 552.101 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold report number 07-89268 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Schulz", with a long horizontal flourish extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 336189

Enc. Submitted documents

cc: Requestor
(w/o enclosures)