



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2009

Ms. Teresa J. Brown
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2009-05620

Dear Ms. Brown:

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# 341230.

The Plano Police Department (the "department") received a request for any arrests or charges against a named individual for any criminal activities, to include family violence reports. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ 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. 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 prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which

¹We note that although you do not raise sections 552.130 and 552.147 of the Government Code in your brief, you have marked portions of the submitted information under these exceptions. Thus, we understand you to raise sections 552.130 and 552.147.

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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that records relating to routine traffic violations are not considered criminal history record information. *Cf. Gov't Code § 411.082(2)(B)* (criminal history record information does not include driving record information).

The present request encompasses, among other things, specified records of incidents of domestic violence involving the requestor and the named individual, as well as unspecified arrest records involving the named individual. To the extent that it encompasses the specified records of domestic violence, this request does not implicate the named individual's privacy interests, and the department may not withhold any of those records on that basis under section 552.101. However, to the extent that the department maintains any other information that depicts the named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) 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 state that the report you have marked as Exhibit B was developed or used in an investigation of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining "child abuse" and "neglect" for the purposes of section 261.201); *see also id.* § 101.003(a) (defining "child" for the purposes of section 261.201). Based upon this representation and our review, we find that section 261.201 is applicable to Exhibit B. As you do not indicate that the department has adopted a rule governing the release of this type

of information, we assume no such regulation exists. Given this assumption, we conclude that Exhibit B is confidential under section 261.201 of the Family Code and must be withheld from disclosure in its entirety under section 552.101 of the Government Code.² See Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130 (a)(1), (2). The department must withhold the information you have marked under section 552.130 of the Government Code.

You assert that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. The department may withhold the social security numbers in the remaining information under section 552.147.³

In summary, to the extent that the department maintains any information that does not pertain to domestic violence and that depicts the named individual as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy. The department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information you have marked under section 552.130 of the Government Code and may withhold the social security numbers in the remaining information under section 552.147 of the Government Code. The remaining information must be released.⁴

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.

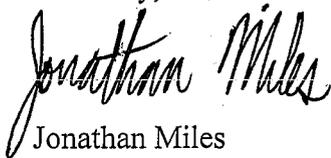
²We note that if the Texas Department of Family and Protective Services has created a file on this case, the child's parent may have the statutory right to review the file. See Fam. Code § 261.201(g).

³We note that 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 under the Act.

⁴We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the department receives another request for this particular information from a different requestor, then the department must again seek a decision from this office.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 341230

Enc. Submitted documents

c: Requestor
(w/o enclosures)