



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2009

Mr. Ron G. MacFarlane, Jr.  
Dealey, Zimmermann, Clark, Malouf & MacFarlane, P.C.  
Attorney for City of Cedar Hill  
3131 Turtle Creek Boulevard, Suite 1201  
Dallas, Texas 75219-5415

OR2009-07906

Dear Mr. MacFarlane:

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# 346458.

The City of Cedar Hill (the "city"), which you represent, received a request for certain information pertaining to an individual involved in a specified incident and any records pertaining to this individual and her husband. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you have submitted.

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. This office has found that

---

<sup>1</sup>Although you cite section 552.101 of the Government Code for your argument to withhold social security numbers, we note the applicable section is section 552.147 of the Government Code.

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). Further, 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, requires the city to compile unspecified records pertaining to two named individuals. This request for unspecified records implicates these named individuals' rights to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such records under section 552.101 in conjunction with common-law privacy.<sup>2</sup> We note the requestor also seeks information pertaining to a specified incident. Thus, this information is not part of a compilation and may not be withheld under section 552.101 on this basis.

Section 552.101 also encompasses information protected by statutes, such as section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(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, 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). Upon review, we find report number 09-001516 was used or developed in an investigation under chapter 261. *See id.* § 261.001 (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 the disabilities of minority removed for general purposes). Thus, we find the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

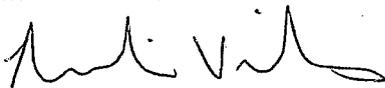
regulation exists. Given that assumption, we find the report number 09-001516 is confidential pursuant to section 261.201 of the Family Code. Therefore, report number 09-001516 must be withheld under section 552.101 of the Government Code.<sup>3</sup>

In summary, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such records under section 552.101 in conjunction with common-law privacy. The city must withhold report number 09-001516 under section 552.101 in conjunction with section 261.201 of 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.oag.state.tx.us/open/index\\_orl.php](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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/rl

Ref: ID# 346458

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.