



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2009

Ms. Martha T. Williams  
Olson & Olson, L.L.P.  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2009-08108

Dear Ms. Williams:

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# 346007.

The City of Cleveland (the "city"), which you represent, received a request for all records related to two named individuals. You claim that the requested 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 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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history record information 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Here, because the requestor asks for unspecified criminal records of two named individuals, the request implicates each individual's 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 such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted reports in which neither of the named individuals is depicted as a suspect, arrestee, or criminal defendant. Thus, these reports do not constitute a compilation of the individuals' criminal history and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address your claim regarding this information.

Section 552.101 also encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201(a) 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). After review of your arguments and the information at issue, we find that some of the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261. Accordingly, the information we have marked is confidential under section 261.201 of the Family Code, and the city must withhold it under section 552.101 of the Government Code.

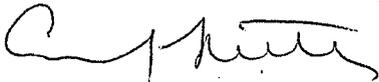
In summary, to the extent the city maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The information we have marked is confidential under section 261.201 of the Family Code, and the city must withhold it under section 552.101 of

the Government Code. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 346007

Enc. Submitted documents

c: Requestor  
(w/o enclosures)