



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2009

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-10088

Dear Ms. Quinn:

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# 349593 (Cedar Park Ref. # 09-147).

The City of Cedar Park (the "city") received a request for all documents relating to three specified locations for approximate specified dates. You state the city has no responsive documents pertaining to one of the specified locations.¹ You state you will release some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, 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).

We understand you to claim that the present request requires the city to compile a person's unspecified law enforcement records. The present request asks for information pertaining to specified locations during specified dates. This request does not mention any named individual and does not ask for any unspecified police records concerning a named individual. Thus, we find that the present request does not implicate an individual's right to privacy. Accordingly, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which 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, 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). We note portions of the submitted information consist of records used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(C), (E) (definition of child abuse includes "physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child" and sexual assault); *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). Upon review, we find that the information we

have marked is within the scope of section 261.201 of the Family Code. You have not indicated that the city's police department has adopted a rule governing the release of this type of information, and we therefore assume that no such rule exists. Given this assumption, we conclude that the information we have marked is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law.²

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which provides that criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center, is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or from other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find that some of the information contained within the remaining documents constitutes confidential CHRI. Accordingly, the city must withhold this information, which we have marked, under section 552.101 in conjunction with section 411.083 and federal law. However, none of the remaining information constitutes CHRI for the purposes of section 411.083; therefore, no portion of the remaining information may be withheld on such basis.

You raise section 552.130 of the Government Code for portions of the remaining information. Section 552.130 of the Government Code 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). You have marked Texas motor vehicle record information pursuant to this section.

²As our ruling is dispositive for this information, we do not address your arguments against disclosure of this information.

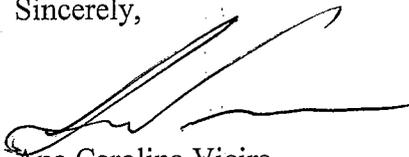
Accordingly, the city must withhold the Texas motor vehicle record information you have marked in the remaining information under section 552.130 of the Government Code.

In summary, the city must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (2) the CHRI we have marked under section 552.101 in conjunction with federal law and section 411.083 of the Government Code, and (3) the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 349593

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city should request another ruling from this office. See Gov't Code §§ 552.301(a), .302.