



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2009

Mr. Mark G. Daniel
Evans, Daniel, Moore & Evans
Sundance Square
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2009-10993

Dear Mr. Daniel:

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# 351443.

The Watauga Police Department (the "department"), which you represent, received a request for all police reports related to a specified address and five named individuals. You claim that the portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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). This office has held the 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) (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 the compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the request is for all police reports related to a specified address and five named individuals. We find that this request for unspecified law enforcement records concerning the named individuals implicates the named individuals' privacy rights. Thus, to the extent the department maintains law enforcement records depicting the named individuals as either suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the department has submitted reports that do not depict the named individuals as either suspects, arrestees, or criminal defendants. We will address your arguments for these reports.

Section 552.101 also encompasses information protected by statute. Section 261.201(a) of the Family Code 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 assert that a portion of the submitted information reveals the identity of an individual who made a report of suspected abuse or neglect. Section 261.201 makes confidential the identity of a person reporting alleged or suspected child abuse. *See id.* § 261.201(a)(1). Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a)(1) of the Family Code.

As stated above, section 552.101 also 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.* at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. In addition, this office has found that some kinds of

medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual must be withheld. However, in certain circumstances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain reports, the entire report must be withheld to protect the individual's privacy. In this instance, a portion of the submitted information involves conduct that is highly intimate and embarrassing and is not of legitimate public interest. Normally, only information that references such conduct is private. However, the department has revealed such information in its brief and, therefore, the requestor knows the nature of the relevant incident and the individual involved. Therefore, only withholding the individual's identity or certain details of the incident from the requestor would not preserve the individual's common-law right of privacy. Accordingly to protect the privacy of the individual to whom the information relates, the department must withhold the report we have marked under section 552.101 of the Government Code in conjunction with common-law privacy in its entirety.¹

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the department must withhold the Texas motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code. The remaining information at issue does not consist of Texas motor vehicle record information; therefore, the department may not withhold this information under section 552.130.

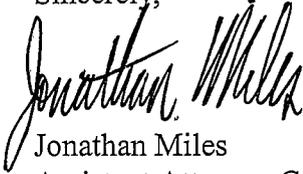
In summary, to the extent the department maintains law enforcement records depicting the named individuals as either suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a)(1) of the Family Code. The department must also withhold the report we have marked in its entirety under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government 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.

¹In the future, the department should redact such information from its brief before sending a copy to the requestor.

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/cc

Ref: ID# 351443

Enc. Submitted documents

c: Requestor
(w/o enclosures)