



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2009-11972

Dear Ms. Sandoval:

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# 353166.

The El Paso Police Department (the "department") received a request for all incident reports dispatched to a specified address for the dates of February 1, 2008 to June 4, 2009, and involving a named individual. You state the department has released some of the responsive information. You claim the submitted 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.

Initially, we note that you have redacted a social security number and a driver's license number from the submitted information. 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. *See* Gov't § 552.147. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, that the department is authorized to withhold the redacted driver's license

number without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information for which it is not authorized.

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 demonstrated. *Id.* at 681-82. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You assert the instant request implicates the named individual's privacy. However, after reviewing the request and the submitted information, we believe the requestor is seeking specific reports involving the requestor and the named individual. Accordingly, we conclude the request does not implicate privacy and none of the submitted information may be withheld on that basis.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

(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). Upon review, we determine that the submitted CAD reports were used or developed in an investigation of alleged child abuse under chapter 261. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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”). Therefore, we find that this information is within the scope of section 261.201 of the Family Code. You do not inform us that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, this information is confidential in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).<sup>2</sup> However, we find that none of the remaining information is within the scope of section 261.201 of the Family Code; therefore, the department may not withhold any of the remaining information on that basis.

We note that the remaining information contains driver’s license numbers subject to 552.130 of the Government Code, which excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130(a)(1)-(2). In this case, however, the requestor is the spouse of the individual to whom the marked information pertains and may have a right of access to this information. *See* Gov’t Code § 552.023(b) (person or a person’s authorized representative has a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests). Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to the marked information pursuant to section 552.023(b), and this information may not be withheld under section 552.130. If the requestor is not acting as the authorized representative of his spouse, then the department must withhold the Texas driver’s license numbers we have marked under section 552.130.

In summary, the department must withhold the submitted CAD reports in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information we have marked under section 552.130 of the Government Code if the requestor is not acting as the authorized representative of his spouse. The remaining information must be released.

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<sup>1</sup>We note that if the requestor is the parent of either of the children at issue, he may have a statutory right to review a file the Texas Department of Family and Protective Services has created on these cases. *See* Fam. Code § 261.201(g).

<sup>2</sup>As our ruling is dispositive for this information, we do not address your argument under section 722.318 of the Health and Safety 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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/jb

Ref: ID# 353166

Enc. Submitted documents

c: Requestor  
(w/o enclosures)