



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2009

Mr. Jason Day  
City Attorney  
City of Royse City  
P.O. Box 638  
Royse City, Texas 75189

OR2009-14919

Dear Mr. Day:

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# 357009 (RCCA09-0072).

The City of Royse City (the "city") received a request for "any and all records of the case of" a named individual. 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 representative sample of information.<sup>1</sup>

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). To demonstrate the applicability of common-law privacy, both prongs of this

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

test must be satisfied. *Id.* at 681-82. This office has found that 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the requestor seeks information pertaining to a specified case. Accordingly, we find that this request does not require the city to compile unspecified law enforcement records and thus does not implicate the named individual's common-law right to privacy. Therefore, the city may not withhold the requested information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;  
or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.001(a), (k), (l). Some of the submitted information pertains to an investigation of an alleged injury to a child. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Thus, we find this information, which we have marked, is generally confidential under section 261.201 of the Family Code.

We note, however, that the requestor may be the parent, managing conservator, or other legal representative of the child named as a victim in the chapter 261 investigation for purposes of section 261.201(k). Further, this individual is not alleged to have committed the alleged or suspected abuse. Because it is not clear whether the requestor is the child’s parent, managing conservator, or other legal representative for purposes of section 261.201(k), we must rule conditionally. If the requestor is not the child’s parent, managing conservator, or other legal representative, the city must withhold the marked information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the child’s parent, managing conservator, or other legal representative, the city may not use section 261.201(a) to withhold this information from this requestor.<sup>2</sup> *Id.* § 261.201(k). In this case, as you raise no further arguments against disclosure of this information, it must be released. Further, as you raise no further arguments for the remaining information, it must also be released.

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<sup>2</sup>In this case, the remaining information being released contains confidential information regarding the alleged child victim to which the requestor has a right of access as the child’s parent, managing conservator, or other legal representative. *See* Fam. Code § 261.201(k). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 357009

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)