



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2010

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-01221

Dear Ms. Brown:

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# 368144.

The City of Plano (the "city") received a request for all police reports pertaining to a specified address or any of three named individuals, occurring over a specified period of time. You state the city has released some of the responsive information. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *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. The present request, in part, seeks police reports from a specified time period pertaining to any of three named individuals. This portion of the request requires the city to compile the named individuals' criminal histories. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the city maintains law enforcement records depicting any 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. As you have submitted records that do not list any of the named individuals as a suspect, arrestee, or criminal defendant, we will address your claimed exceptions to disclosure.

Section 552.101 also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You assert submitted Exhibit B consists of reports of juveniles engaged in conduct in need of supervision. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Upon review, we agree portions of Exhibit B, which we have marked, are subject to section 58.007. It appears none of the exceptions in section 58.007 apply; therefore, these reports are

confidential under section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. We note, however, the remaining reports do not pertain to juveniles engaged in delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. *See id.* § 51.03(a), (b). Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he 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.

Id. § 261.201(a). You assert a portion of the remaining information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *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 agree a portion of the information at issue, which we have marked, is within the scope of section 261.201. You do not indicate that the city has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the information we have marked is confidential pursuant to section 261.201 of the Family Code and the city must withhold it in its entirety under section 552.101 of the Government Code. However, you have not demonstrated that the remaining information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. Thus, the remaining information is not confidential under section 261.201 of the Family Code and the city may not withhold it under section 552.101 on that basis.

You also raise section 552.108(a)(1) of the Government Code for the report ending in number 194065. You state you will withhold this report under section 552.108, as it relates to an ongoing criminal investigation, based upon the ruling in *Attorney General v. Plano Police Department*, No. GV-001919 (126th Dist., Travis County, Tex., December 18, 2000). Therefore, with the exception of basic information, the city may withhold report number 194065 in accordance with the ruling in *Attorney General v. Plano Police Department*. We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

The remaining information contains a Texas license plate number. Section 552.130 of the Government Code exempts 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."¹ *Id.* § 552.130. Accordingly, the city must withhold the Texas license plate number we have marked under section 552.130 of the Government Code.²

In summary, to the extent the city maintains law enforcement records depicting any 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. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with (1) section 58.007(c) of the Family Code and (2) section 261.201 of the Family Code. With the exception of basic information, the city may withhold report number 194065 in accordance with the ruling in *Attorney General v. Plano Police Department*. The city must withhold the information we marked under section 552.130 of the Government Code. As no further exceptions to disclosure have been raised, 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.

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,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read 'M Entsminger', with a stylized flourish at the end.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 368144

Enc. Submitted documents

c: Requestor
(w/o enclosures)