



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 29, 2010

Ms. Ylise Janssen  
School Attorney  
Austin Independent School District  
1111 West 6<sup>th</sup> Street, Room A-240  
Austin, Texas 78703-5338

OR2010-09558

Dear Ms. Janssen:

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# 384764.

The Austin Independent School District (the "district") received two requests for information pertaining to a specified incident. You claim that the submitted 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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 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. 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. We note, however, the requestors ask for information pertaining to a specified incident. This request does not implicate the named individual's common-law right to privacy and this information may not be withheld as a compilation of the named individual's criminal history. Accordingly, we will address your arguments for this information.

Section 552.101 also encompasses information that other statutes make confidential such as section 261.201(a) of the Family Code, which provides in pertinent 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, other than the department or the Texas Youth Commission, 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 § 261.201(a), (k), (l). You seek to withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you state the submitted information pertains to an investigation of alleged abuse conducted by the district's police department. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261). Upon review, we find the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated the district's police department has adopted a rule governing the release of this type of information. Accordingly, we assume no such rule exists. Therefore, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

In this instance, however, the submitted information reveals that one of the requestors is the child's legal representative. Further, the legal representative is not the individual alleged to have committed the suspected abuse. *See id.* § 261.201(k). Accordingly, the district may not use section 261.201(a) to withhold the submitted information from the requestor representing the child victim. *Id.* However, the district must withhold the submitted information in its entirety from the other requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See ORD 440 at 2.*

With respect to the requestor representing the victim, section 261.201(l)(3) of the Family Code states that the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k); therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3). *Id.* § 261.201(l)(3). In addition, although section 261.201(a) may not be used to withhold the submitted information from the requestor representing the victim, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. Fam. Code § 261.201(l)(2). Thus, because you also assert section 552.108, we will address your remaining argument under the Act.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection,

investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based on this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district may withhold the submitted report under section 552.108(a)(1) of the Government Code.

You contend the remaining information is confidential in its entirety on the basis of common-law privacy. As noted above, section 552.101 encompasses the doctrine of common-law privacy. The types of information considered highly 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.

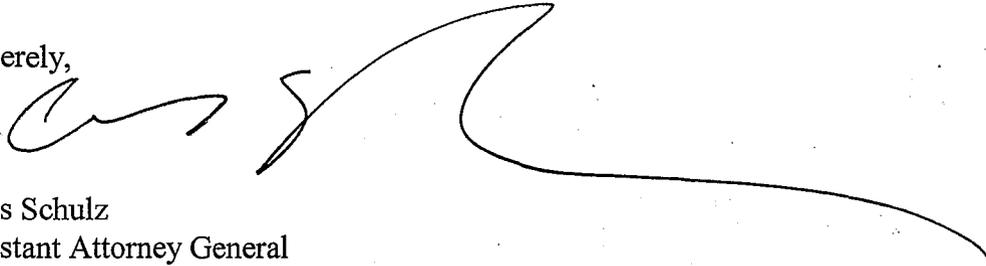
In this instance, we note the requestor represents the child victim. As such, the requestor would have a special right of access to any information that would be protected from public disclosure for the purpose of protecting the victim’s own privacy interests. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, no information may be withheld from this requestor on the basis of common-law privacy.

In summary, with the exception of basic information, the district may withhold the remaining information under section 552.108(a)(1) from the requestor representing the child victim. However, the district must withhold the information we marked within the basic information under section 552.101 in conjunction with section 261.201. The district must withhold the submitted report in its entirety from the other requestor under section 552.101 in conjunction with section 261.201.

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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long, sweeping underline that extends across the page.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/tp

Ref: ID# 384764

Enc. Submitted documents

c: Requestor  
(w/o enclosures)