



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2011

Ms. Debra A. Drayovitch  
Drayovitch P.C.  
620 West Hickory Street  
Denton, Texas 76201

OR2011-02786

Dear Ms. Drayovitch:

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# 409900.

The Corinth Police Department (the "department"), which you represent, received a request for information involving the requestor and two other named individuals and a specified time interval, including information relating to a specific incident. You claim some of 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 information you submitted.

You also inform us the department sent the requestor a request for clarification, "as the request is vague, ambiguous and overly broad." We note section 552.222 of the Government Code authorizes a governmental body to communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b). Nevertheless, you have submitted information the department seeks to withhold from the requestor. We note a governmental body must make a good-faith effort to relate a request to responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Thus, as you have submitted information the department deems to be responsive to the request, we will address the public availability of the submitted information. Should you receive a response to the department's request for clarification and seek to withhold any other information from the requestor, you must request another decision. *See* Gov't Code §§ 552.301(a), .302.

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 exception 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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. 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). We also 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 access to unspecified law enforcement records involving herself and two other named individuals. Thus, this request requires the department to compile criminal histories and thereby implicates the privacy interests of the requestor and the other two individuals. We note the requestor would have a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the public to protect her privacy. *See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning herself).<sup>1</sup> Therefore, information relating to the requestor may not be withheld under section 552.101 in conjunction with common-law privacy as a compilation of her criminal history. We also note the requestor seeks access to information relating to a specific incident. Therefore, her request for information relating to that incident does not require the department to compile unspecified law enforcement records. Thus, report numbers 200908328 and 200908340, which relate to that incident, may not be withheld on privacy grounds as a compilation of criminal history information. You also have submitted report number 200913661, which does not depict either of the other two named individuals as a suspect, arrested person, or criminal defendant. Thus, report number 200913661 may not be withheld on privacy grounds as a compilation of criminal history information. To the extent, however, that the department maintains any other information that depicts either of the other two named individuals as a suspect, arrested person, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the requestor may be an authorized representative of one of the other two individuals. As such, the requestor would also have a right of access under section 552.023 to any information the department would be required to withhold from the public to protect that individual's privacy. Therefore, any information that depicts that

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<sup>1</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, 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." Gov't Code § 552.023(a).

individual as a suspect, arrested person, or criminal defendant may not be withheld from this requestor under common-law privacy if she is the individual's authorized representative. *See* Gov't Code § 552.023; ORD 481 at 4.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in 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 [Texas Department of Family and Protective Services] 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 contend report number 200913359 is confidential under section 261.201. We find the information in question was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining “child,” for purposes of offense of injury to a child, as a person 14 years of age or younger). We therefore conclude report number 200913359 is generally confidential under section 261.201(a) of the Family Code. In this instance, however, the requestor appears to be a parent of the child who is listed as the victim of the alleged abuse, and the requestor is not accused of committing the alleged abuse. Therefore, report number 200913359 may not be withheld from this requestor under section 552.101 on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Thus, the department must withhold the information we have marked in report number 200913359 that identifies the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Section 261.201(l) also provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 261.201(l)(2). Therefore, we will address your claim under section 552.108 of the Government Code for report number 200913359. We also will address your claims under section 552.108 for the information you seek to withhold in report numbers 200908328, 200908340, and 200913661.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state release of report number 200913359 would interfere with a pending criminal investigation. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to the remaining information in that report. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 also excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state the information you have marked in report numbers 200908328, 200908340, and 200913661 is related to closed cases that did not result in a conviction or

deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to the marked information.

We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 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 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information from report number 200913359, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the remaining information in report number 200913359 under section 552.108(a)(1) of the Government Code. As you indicate basic information will be released from report numbers 200908328, 200908340, and 200913661, we conclude the department may withhold the information you have marked in those reports under section 552.108(a)(2) of the Government Code.

Lastly, we note section 552.130 of the Government Code is applicable to some of the information in report numbers 200908328 and 200908340.<sup>2</sup> This section excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. See Gov't Code § 552.130(a)(1). Section 552.130 protects personal privacy. We have marked Texas driver's license information that falls within the scope of section 552.130. We note the requestor may be the authorized representative of one of the individuals to whom the marked driver's license information pertains. If so, the requestor has a right of access to that individual's Texas driver's license information under section 552.023 of the Government Code. See Gov't Code § 552.023; ORD 481 at 4. Otherwise, the department must withhold the marked Texas driver's license information under section 552.130 of the Government Code.<sup>3</sup>

In summary: (1) any unspecified law enforcement information that depicts any of the named individuals other than the requestor as a suspect, arrested person, or criminal defendant must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access as an authorized representative of one of the individuals under section 552.023 of the Government Code; (2) the department must withhold the information we have marked in report number 200913359 that identifies the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code; (3) the department may withhold the remaining information in report number 200913359 under

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<sup>2</sup>This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

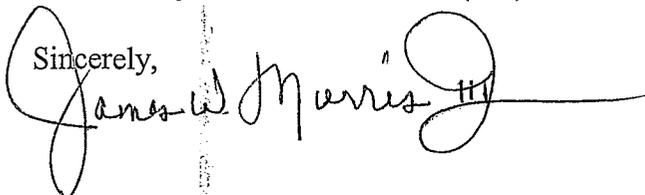
<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number under section 552.130.

section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c); (4) the department may withhold the information you have marked in report numbers 200908328, 200908340, and 200913661 under section 552.108(a)(2) of the Government Code; and (5) the department must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code, unless the requestor has a right of access under section 552.023 to one of the individual's driver's license information as his authorized representative. The department must release the remaining information in report numbers 200908328, 200908340, and 200913661.<sup>4</sup>

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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 409900

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the requestor has a right of access to information in report number 200913359 that would be confidential with respect to the general public. Should the department receive another request for report number 200913359 from a different requestor, the department should resubmit the report and request another ruling. *See* Gov't Code §§ 552.301(a), .302.