



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2013

Ms. Michele Tapia
Assistant City Attorney
Office of the City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2013-02523

Dear Ms. Tapia:

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# 478686 (City ID No. PD-335).

The City of Carrollton (the "city") received a request for specified information pertaining to a specified address and a named individual.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the common-law right to privacy, which protects

¹We understand the city received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individual and thus implicates this individual's right to privacy. Accordingly, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the named individual's right to privacy, and the city may not withhold it as a compilation of criminal history under section 552.101.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c), which provides as follows:

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(c), a “child” is defined as a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). You raise section 58.007 for Exhibit E. Upon review, we agree the information at issue involves delinquent conduct that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. However, we are unable to determine whether the alleged suspect listed in Exhibit E was ten years of age or older and under seventeen years of age at the time of the conduct at issue. Therefore, we must rule conditionally. If the suspect was ten years of age or older and under seventeen years of age at the time of the conduct, then Exhibit E is confidential in its entirety pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code on that basis. If the suspect was not ten years of age or older and under seventeen years or age at the time of the conduct, section 58.007 is not applicable to Exhibit E, and it may not be withheld under section 552.101 in conjunction with section 58.007(c).

Section 552.101 of the Government Code also encompasses information protected by 261.201 of the Family Code, which provides, in relevant part:

(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). Upon review, we find Exhibits C, D, and Q were used or developed in investigations of alleged or suspected child abuse conducted by the city’s police department (the “department”) under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 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 disabilities of minority removed for general purposes). Therefore, the information at issue falls within the scope of section 261.201(a). You do not indicate the department has adopted a rule that governs the release of this information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the city must withhold Exhibits C, D, and Q under section 552.101 of the Government Code in

conjunction with section 261.201(a) of the Family Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a)(2) 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 . . . 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. See *id.* § 552.301(e)(1)(A); see *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the information you have marked in Exhibits E, F, G, J, and K relates to closed cases that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable the information at issue.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, although you have marked the property involved in Exhibit G under section 552.108, we note basic information includes the property involved. See *Houston Chronicle*, 531 S.W.2d at 186-87; ORD 127 at 3-4. Accordingly, with the exception of the property involved in Exhibit G, which must be released, the city may withhold the information you have marked in Exhibits E, F, G, J, and K under section 552.108(a)(2) of the Government Code.³

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. The doctrine of common-law privacy also protects the types of information held to be intimate or embarrassing in *Industrial Foundation*, which includes 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. See 540 S.W.2d at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records

²As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

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Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You have marked the remaining information you claim is protected by common-law privacy. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how any of the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130(a)(2) of the Government Code excepts from disclosure information related to "a motor vehicle title or registration issued by an agency of this state or another state or country[.]" Gov't Code § 552.130(a)(2). Upon review, we conclude the city must withhold the motor vehicle record information you have marked, and the additional information we have marked, in the remaining information under section 552.130(a)(2) of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the suspect at issue in Exhibit E was ten years of age or older and under seventeen years of age at the time of the conduct, then Exhibit E must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Otherwise, Exhibit E may not be withheld under section 552.101 of the Government Code on that basis. The city must withhold Exhibits C, D, and Q under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the property involved in Exhibit G, which must be released, the city may withhold the information you have marked in Exhibits E, F, G, J, and K under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor record vehicle information marked in the remaining information under section 552.130(a)(2) of the Government Code. The city must release the remaining information.

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, 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 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 478686

Enc. Submitted documents

c: Requestor
(w/o enclosures)