



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2013

Ms. Rachel L. Lindsay
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-05852

Dear Ms. Lindsay:

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# 483732 (McKinney ORR# 10-6722).

The City of McKinney (the "city"), which you represent, received a request for all police reports pertaining to any of six named individuals. You claim 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). To demonstrate the applicability of common-law privacy, both prongs of this 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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The instant request is for all police records involving any of the six named individuals. This request for unspecified law enforcement records requires the city to compile criminal histories for the six named individuals, thus implicating the named individuals' rights to privacy. We note, however, one of the named individuals is the requestor's husband. As such, the requestor may have a right of access under section 552.023 of the Government Code to any information the city would be required to withhold from the public to protect this individual's privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). We are unable to determine whether the requestor is acting as the authorized representative of her husband. Therefore, we rule conditionally as to the husband. To the extent the city maintains law enforcement records depicting the requestor's husband as a suspect, arrestee, or criminal defendant and the requestor does not have a right of access under section 552.023, the city must withhold such information under section 552.101 in conjunction with common-law privacy. To the extent the city maintains such records and the requestor has such a right of access under section 552.023, the city may not withhold such information as a criminal history compilation under section 552.101 in conjunction with common-law privacy. As to the named individuals who are not the requestor's husband, we find, to the extent the city maintains law enforcement records depicting these named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common law privacy.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides, in pertinent part, 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

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

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct"). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Case number 12-000275 involves a child engaged in delinquent conduct that occurred after September 1, 1997. Thus, this information constitutes a juvenile law enforcement record that is generally confidential pursuant to section 58.007(c). In this instance, however, we note the requestor is a parent of the juvenile suspect. Therefore, the submitted information may not be withheld from this requestor under section 58.007(c). *See id.* § 58.007(e) (law enforcement records concerning a child may be inspected or copied by the child's parent or guardian). However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2).

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

(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.

Id. § 261.201(a). Upon review, we find case number 12-000275 was used or developed in an investigation by the city's police department of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" as a 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). As you do not indicate the city's police department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine case number 12-000275 must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code.¹

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). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information at issue pertains to criminal investigations and cases that concluded in results other than convictions or deferred adjudications. Thus, we agree that section 552.108(a)(2) is applicable to the remaining information at issue.

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic front-page information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, and includes, among other items, a detailed description of the offense. 531

¹As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the city may withhold the remaining information at issue under section 552.108(a)(2).²

We note portions of the basic information in case numbers 12-005499 and 12-005502 are subject to common-law privacy. As previously discussed, section 552.101 of the Government Code encompasses the common-law right of privacy, which protects information that is highly intimate or embarrassing and is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The type of information considered intimate or 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. This office has found 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 Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, when releasing basic information for case numbers 12-005499 and 12-005502, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the city maintains law enforcement records depicting any of the six named individuals as suspects, arrestees, or criminal defendants, and the requestor is not acting as an authorized representative for her husband, the city must withhold such information under section 552.101 of the Government Code in conjunction with common law privacy. To the extent the city maintains such records regarding the requestor's husband and the requestor has a right of access as her husband's authorized representative under section 552.023 of the Government Code, the city may not withhold such information from this requestor as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold case number 12-000275 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the city may withhold the remaining information at issue under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the city must withhold the information we have marked in case numbers 12-005499 and 12-005502 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining basic information.

²As our ruling is dispositive, we need not address your remaining argument under section 552.108(b)(2) of the Government Code for this 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 that reads "Lindsay E. Hale". The signature is written in a cursive style with a large, looped initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 483732

Enc. Submitted documents

c: Requestor
(w/o enclosures)