



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2013

Ms. Linda Pemberton  
Paralegal  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2013-08191

Dear Ms. Pemberton:

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# 487544 (Reference No. W010067-030413).

The Killeen Police Department (the "department") received a request for calls for service "taken or dispatched to" two specified addresses during a particular time period related to a named individual. You state the department has released thirty-six calls for service to the requestor. 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 elements 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) (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 department to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department 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. Thus, this information is not part of the named individual's criminal history compilation and may not be withheld under section 552.101 on this basis. Therefore, we will address your arguments against disclosure of this information.

Next, we note some of the requested information was the subject of three previous requests for information, in response to which this office issued Open Records Letter Nos. 2012-07409 (2012), 2012-16696 (2012), and 2013-03660 (2013). In Open Records Letter No. 2012-07409, we ruled (1) the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) with the exception of basic information, the department may withhold police report number 10-009975 under section 552.108(a)(1) of the Government Code; and (3) the department must release the remaining information.<sup>1</sup> In Open Records Letter No. 2012-16696, we ruled the department must (1) continue to rely on Open Records Letter No. 2012-07409 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling and (2) release the remaining information.<sup>2</sup> In Open Records Letter No. 2013-03660, we ruled the department may withhold report numbers 12-0094447 and 12-12013369 under section 552.108(a)(2) of the Government Code but must release basic information.<sup>3</sup> As we have no indication the law, facts, or circumstances on which the prior rulings were based have changed, we find the department may continue to rely on Open Records Letter Nos. 2012-07409, 2012-16696, and 2013-03660 as previous determinations, and withhold or release the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely the same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from

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<sup>1</sup>The department voluntarily released call for service numbers 1037885, 1046227, 1053216, 108979, 1190190, 121226, 1239332, 1245575, and 1322513.

<sup>2</sup>The department voluntarily released call for service numbers 1400813, 1405650, 1407911, 1418686, 1419590, and 140021.

<sup>3</sup>The department voluntarily released call for service numbers 1349411, 1349394, 1405721, 1413218, 1416432, 1416852, 1452436, 1453170, 1453499, and 1456354.

disclosure). To the extent the submitted information was not the subject of the prior rulings, we address your arguments against disclosure.

You assert some of the submitted information is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 552.101 of the Government Code also encompasses information protected by the MPA. Section 159.002 of the MPA provides in relevant part the following:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician.

You assert some of the information in call for service numbers 1464258, 1483208, and 1483209 consists of medical records subject to the MPA. Upon review, we find none of the information at issue constitutes medical records for the purposes of the MPA. Thus, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which states:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). You indicate some of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find this information is within the scope of section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>4</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You assert the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the remaining information pertains to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree the department has demonstrated the remaining information relates to criminal investigations that concluded in a final result other than a conviction or deferred adjudication.

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 information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense from the narrative portion of the report. *Houston Chronicle*, 531 S.W.2d at 186-87. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.

We understand you to claim some of the basic information is private. Section 552.101 of the Government Code also encompasses 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). The types of

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<sup>4</sup>As we make this determination, we do not address your other arguments to withhold this information.

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. Upon review, we find none of the basic information is private, and the department may not withhold it under section 552.101 of the Government Code on that ground.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must continue to rely on Open Records Letter Nos. 2013-03660, 2012-16696, and 2012-07409 as previous determinations, and withhold or release the previously ruled upon information in accordance with those rulings. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic front-page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>5</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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

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<sup>5</sup>As our ruling is dispositive, we do not address your remaining claim.

Ref: ID# 487544

Enc. Submitted documents

c: Requestor  
(w/o enclosures)