



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2014

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

OR2014-05511

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# 518451 (Killeen ID #W012414)

The Killeen Police Department (the "department") received a request for all police records related to a named individual. You state you have released some information 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.

Initially, we note some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2013-04530 (2013), 2013-17095 (2013), and 2013-17365 (2013). In Open Records Letter No. 2013-04530 we found the department must withhold report numbers 09-004395, 09-004416, 09-005167, and 09-007153 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and, with the exception of basic information, may withhold report numbers 09-009164, 10-016955, and 12-013179 under section 552.108(a)(2) of the Government Code. In Open Records Letter No. 2013-17095 we found, with the exception of basic information, the department may withhold report number 13-006304 under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2013-17365 we found, with the exception of basic information and the information subject to section 552.022 of the Government Code, the department may withhold report numbers 13-008221 and 13-008223 under section 552.108(a)(1) of the

Government Code, and must withhold the information we marked under section 552.137 of the Government Code. We understand the law, facts, and circumstances on which the previous rulings were based have not changed. Therefore, to the extent the information at issue is identical to the information ruled on in the previous rulings, we conclude the department must rely on Open Records Letter Nos. 2013-04530, 2013-17095, and 2013-17365 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (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 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 disclosure). However, because the remaining information is not encompassed by the previous determinations, we will consider your arguments for this information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. This office has found 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request seeks all reports pertaining to a named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code, which protects the law enforcement records of juveniles. 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.

Fam. Code § 58.007(c), (e). 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 at the time the conduct occurred. *See id.* § 51.02(2). Juvenile law enforcement records relating to juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Upon review, we find report number 08-016501 involves juvenile delinquent conduct or a child engaged in conduct indicating a need for supervision that occurred after September 1, 1997. As such, we find the information at issue is subject to section 58.007(c) of the Family Code. Although the requestor is a parent of the juvenile at issue in report number 08-016501, that juvenile is now an adult. Accordingly, the requestor no longer has a right of access to his adult child's records under section 58.007(e). *See id.* § 58.007(e). Therefore, the department must withhold report number 08-016501 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which 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 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.

*Id.* § 261.201(a), (k). Upon review, we find report number 08-016500 falls within the scope of section 261.201(a) of the Family Code. *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 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 the disabilities of minority removed for general purposes). We note information may not be withheld on the basis of section 261.201(a) from a parent of a child who was the victim of alleged or suspected abuse or neglect unless the parent is alleged to have committed the abuse or neglect. *See id.* § 261.201(k). Although the requestor is a parent of the child who was the victim of the alleged or suspected abuse or neglect, the requestor is one of the individuals accused of committing the abuse or neglect. Accordingly, we conclude report number 08-016500 is confidential pursuant to section 261.201 of the Family Code and the department must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

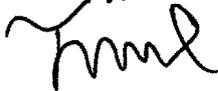
In summary, the department must rely on Open Records Letter Nos. 2013-04530, 2013-17095, and 2013-17365 as previous determinations and withhold or release the identical information in accordance with those rulings. To the extent the department

maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 08-016501 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold report number 08-016500 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 518451

Enc. Submitted documents

c: Requestor  
(w/o enclosures)