



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2014

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

OR2014-11390

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# 527859 (City ID No. 2587).

The City of Carrollton (the "city") received a request for information regarding a named individual during a specified time period, including specified incidents. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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, in part, seeks all reports pertaining to a named individual. This aspect of the request requires the city to compile the named individual's criminal history and implicates the privacy of the named individual. Therefore, to the extent the city maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

You have submitted documents relating to the incident specified by the requestor, as well as information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of the named individual's criminal history, and the city may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads 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.

Fam. Code § 58.007(c). 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 of the reported conduct. *See id.* § 51.02(2). Exhibits B, C, and D involve juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of

Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the city must withhold Exhibits B, C, and D under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses information made confidential by section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Id. § 261.201(a). The information in Exhibits E, F, and G consists of information used or developed in investigations of alleged or suspected abuse under chapter 261 of the Family Code. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). We have no indication the city has adopted a rule governing the release of this type of information. Accordingly, we assume that no such regulation exists. Given that assumption, and based on our review, we conclude the information in Exhibits E, F, and G is confidential pursuant to section 261.201 of the Family Code, and city must withhold that information under section 552.101 of the Government Code on that basis.¹

We note the remaining information contains driver’s license information subject to section 552.130 of the Government Code.² Section 552.130 provides information relating

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to a motor vehicle operator's license or driver's issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1). Accordingly, the city must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, to the extent the city maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold Exhibits B, C, and D under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and Exhibits E, F, and G under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we have marked under section 552.130 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.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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

Ref: ID# 527859

Enc. Submitted documents

c: Requestor
(w/o enclosures)