



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2014

Ms. Lisa D. Mares
Counsel for the Town of Little Elm
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-18940

Dear Ms. Mares:

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# 540403.

The Town of Little Elm (the "town"), which you represent, received two requests for police reports and records related to a specified address during two specified time periods. You state the town will redact motor vehicle record information subject to section 552.130(c) of the Government Code, personal e-mail addresses subject to section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009), and social security numbers pursuant to section 552.147(b) of the Government Code.¹ 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.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d),(e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public, under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion. *See* ORD 684. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. Gov't Code § 552.147(b)

Initially, we note the second requestor only seeks information related to a specified address from August of 2012 to the date of the request. Thus, the remaining information you have submitted as responsive to the first request is not responsive to the second request, and the town need not release such information in response to the second request.

Section 552.101 of the Government Code excepts “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 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. 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.

You assert the present requests require the town to compile unspecified law enforcement records occurring at a specified address for a specified period of time and thus implicate an individual’s right to privacy. However, these requests do not seek a compilation of an individual’s criminal history; rather, the requests are for reports associated with a specific address. Such requests do not implicate an individual’s right to privacy. Accordingly, the town may not withhold any of the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses section 261.201 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 [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.

Fam. Code § 261.201(a). Upon review, we find the information we marked was used or developed in an investigation of alleged child abuse, and the information falls within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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). Accordingly, based on our review, we determine the information we marked is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). You state the town has not adopted a rule that governs the release of this type of information. Accordingly, we conclude the information we marked is confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 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.

...

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child[.]

Fam. Code § 58.007(c), (e), (j)(1). 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). The information we have marked involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Thus, this information is generally confidential under section 58.007(c).

In this instance, the second requestor is the parent of one of the juvenile offenders at issue in police report 130022727. Therefore, this requestor has a right to inspect information concerning her child under section 58.007(e), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent's child must be redacted. *See id.* § 58.007(j)(1). We are unable to determine the age of the witness in police report 130022727. Thus, we must rule conditionally. To the extent the identifying information we have marked pertains to a witness who was under eighteen years of age at the time of the reported conduct, this information must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. To the extent the marked information does not pertain to a juvenile witness under eighteen years of age at the time of the reported conduct, the marked information may not be withheld under section 552.101 in conjunction with section 58.007(j)(1).

In police report 120256917, we are unable to determine the age of the suspects. Therefore, we must rule conditionally. If the suspects at issue were ten years of age or older and under seventeen years of age at the time of the conduct, then police report 120256917 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, if police report 120256917 involves suspects who were not ten years of age or older and under seventeen years of age at the time of the conduct, then the report is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. Therefore, the town must withhold the information we have marked 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 encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)).

You state the remaining information includes the identities of persons who have provided the town with information regarding alleged violations of law. Upon review, there is no indication the subjects of the investigations know the identities of the individuals. Based on these representations, we find the town may withhold the informers' identifying information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate how the remaining information identifies an individual who reported activities over which the governmental body has criminal or quasi-criminal law enforcement authority for purposes of the informer's privilege. Thus, the town may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Common-law privacy protects the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we marked satisfies standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. We find the remaining information is not highly intimate or embarrassing information of no legitimate public concern and thus the town may not withhold it under section 552.101 of the Government Code on this basis.

In summary, the town must withhold the information we have marked under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. The town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The town may not withhold police report 130022727 from the second requestor; however, if the identifying information we have marked pertains to a witness who was under eighteen years of age at the time of the reported conduct, this information must be withheld under section 552.101 of the

Government Code in conjunction with section 58.007(j)(1) of the Family Code. The town must withhold police report 120256917 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code if the suspects are ten years of age or older and under seventeen years of age at the time of the conduct. The town may withhold the informers' identifying information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The town must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 540403

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)