



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2014

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

OR2014-21767

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# 545617.

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to a specified individual for a specified time period. 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 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. 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. 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.

You argue the submitted information must be withheld as a compilation of the named individual's criminal history. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. Thus, the submitted information does not consist of a compilation of the named individual's criminal history, and the department 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, such as section 261.201 of the Family Code, which provides in relevant 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 [Texas Department of Family and Protective Services] 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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find report numbers 12-025827, 12-028267, and 14-052634 were used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” 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, we find report numbers 12-025827, 12-028267, and 14-052634 are subject to chapter 261 of the Family Code. However, in this instance, the requestor has provided a signed authorization of release of records from the named individual who is the parent of the child victim listed in report numbers 12-025827, 12-028267, and 14-052634, and is not alleged to have committed the abuse in the reports at issue. Therefore, the requestor may be acting as the authorized representative of the parent of the child victim. As such, this requestor may have a right of access to the information at issue pursuant to section 261.201(k). *See* Fam. Code § 261.201(k). Because we are unable to determine whether the requestor is acting as the authorized representative of the parent of the child victim for purposes of section 261.201(k), we rule conditionally. If the requestor is not the authorized representative of the parent for purposes of section 261.201(k), then the department must withhold report numbers 12-025827, 12-028267, and 14-052634 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is acting as the authorized representative of the parent for purposes of section 261.201, then the department may not use section 261.201(a) to withhold the information at issue from this requestor. *See id.* § 261.201(k). In that instance, we note section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your remaining arguments against disclosure.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in pertinent part:

(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.

Id. § 58.007(c), (e). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision 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 at the time of the incident at issue. *See id.* § 51.02(2). Upon review, we agree report numbers 10-021559, 10-071777, and 10-092089 involve a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information is subject to section 58.007(c). Although the requestor may be the authorized representative of a parent of the juvenile offender, the information at issue reflects the juvenile offender is now an adult. Accordingly, the requestor no longer has a right of access to the adult child's records under section 58.007(e). *See id.* § 58.007(e). It does not appear that any of the exceptions to confidentiality under section 58.007 apply. Accordingly, the department must withhold report numbers 10-021559, 10-071777, and 10-092089 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.¹ However, we find the remaining information does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find you have failed to demonstrate the applicability of section 58.007 to the remaining information, and it may not be withheld under section 552.101 on that basis.

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

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find none of the remaining information consists of CHRI for purposes of chapter 411, and none of the remaining information may be withheld under section 552.101 on that basis.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *See* 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). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.,* Open Records Decision No. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information at issue may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the remaining information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the department must generally withhold the motor vehicle record information at issue, which we have marked, under section 552.130 of the Government Code.

As noted above, the requestor may be acting as the authorized representative of one the individuals whose private information is at issue. To the extent the requestor is acting as the authorized representative of such an individual, the requestor has a right of access under section 552.023 to information pertaining to that individual that would otherwise be protected under section 552.130 of the Government Code. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, to the extent the requestor has a right of access to the information we marked, such information may not be withheld from this requestor under section 552.130 of the Government Code.

In summary, if the requestor is not the authorized representative of the parent for purposes of section 261.201(k), then the department must withhold report numbers 12-025827, 12-028267, and 14-052634 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold report numbers 10-021559, 10-071777, and 10-092089 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must generally withhold the information we marked under section 552.130 of the Government Code; however, if the requestor is acting as the authorized representative of the individual whose motor vehicle record information is at issue, the department must release it to this requestor. The department 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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 545617

Enc. Submitted documents

c: Requestor
(w/o enclosures)