



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2014

Ms. Lysia H. Bowling
City Attorney
The City of San Angelo
72 West College Avenue
San Angelo, Texas 76903-5814

OR2014-22208

Dear Ms. Bowling:

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# 545970.

The San Angelo Police Department (the "department") received a request for all records pertaining to the requestor's client. You state the department has released some responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ 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 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.

¹Although you do not raise sections 552.130 and 552.147 of the Government Code in your briefing to this office, we understand you to raise these exceptions based on your markings.

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning a named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. However, the requestor is the attorney for the individual whose information is at issue. As such, the requestor has a right of access to his client's information under section 552.023 of the Government Code. *See Gov't Code* § 552.023(b) (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); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the department may not withhold Exhibit E from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

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 [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 records in Exhibit D and the information we have marked in Exhibit E consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of

chapter 261 of Family Code); *see also id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we determine Exhibit D and the marked information in Exhibit E are confidential under section 261.201(a) of the Family Code.

Section 560.003 of the Government Code provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See* Gov’t Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints). Section 560.002 of the Government Code provides, however, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *See id.* § 560.002(1)(A). Thus, as the authorized representative of the individual whose fingerprints are at issue, the requestor has a right of access to his client’s fingerprints under section 560.002 of the Government Code. *See id.* § 560.002; ORD 481 at 4 (1987).

However, there is a conflict between the confidentiality mandated under section 261.201(a) of the Family Code and the right of access provided to this requestor under section 560.002 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov’t Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). In this instance, we find section 261.201 of the Family Code generally applies to information used or developed in an investigation of alleged child abuse or child neglect. Section 560.002, however, applies specifically to biometric identifier information. Accordingly, we find the right of access provided to this requestor under section 560.002 prevails over the general confidentiality of section 261.201 of the Family Code. Thus, the department must release the fingerprints of the requestor’s client in Exhibit E, but it must withhold Exhibit D and the remaining marked information in Exhibit E under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information in Exhibit C relates to a pending criminal investigation and prosecution. Based on these representations, we find the department has demonstrated release of Exhibit C would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, which must be released, the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). We note the requestor has a right of access to his client’s driver’s license information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b); ORD 481 at 4. Upon review, we find the department must withhold only the information we have marked in Exhibit E under section 552.130 of the Government Code.

You seek to withhold a social security number under section 552.147 of the Government Code, which 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 under the Act. Gov’t Code § 552.147(b). The requestor has a right, however, to his client’s social security number. *See generally id.* § 552.023(b). Therefore, the department may not withhold the marked social security number under section 552.147, but must, instead, release it to the requestor.

In summary, except for the fingerprints of the requestor’s client, which must be released pursuant to section 560.002 of the Government Code, the department must withhold Exhibit D and the marked information in Exhibit E under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in

Exhibit E under section 552.130 of the Government Code. The remaining information must be released to this requestor.³

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 545970

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released in this instance includes information that may be confidential with respect to the general public. See Gov't Code §§ 552.023(a), 560.002. If the department receives another request for this information from a different requestor, it must again seek a ruling from this office.