



January 16, 2015

Mr. Byron L. Brown
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Houston, Texas 77024-4494

OR2015-00946

Dear Mr. Brown:

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# 550381.

The City of Meadows Place (the "city"), which you represent, received a request for all documents related to four specified individuals, a specified report, and copies of any complaints or disciplinary actions against specified officers.¹ You state you will release a portion of the information to the requestor. You state the city will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, as well as certain information under sections 552.130(c), 552.136,

¹We note the city sought and received clarification of this request from the requestor. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

and 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to the specified individuals, specified report, or complaints or disciplinary actions against specified officers. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this 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) (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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

²Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c)(2). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See id.* § 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). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). 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. *See id.* § 552.147(b).

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information that does not list the named individuals as a suspect, arrestee, or criminal defendant. Further, we note you have submitted information related to the incident specified by the requestor. This information does not constitute part of a criminal history compilation and may not be withheld on that basis.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007. Fam. Code § 58.007(c). 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.

Id. 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). A portion of the submitted information involves juvenile delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). Thus, this information, which we have marked, is subject to section 58.007(c). In this instance, it does not appear any of the exceptions to confidentiality under section 58.007 apply. Accordingly, the city must withhold the information we have marked under section 552.101 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 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.

Id. § 261.201(a). Upon review, we find portions of the submitted information were used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁴

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See Gov’t Code* § 411.083(a). 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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that 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

⁴As our ruling is dispositive, we need not address your argument against disclosure of this information.

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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. However, section 411.083 does not apply to active warrant information or other information relating to an individual's current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement with criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find a portion of the information at issue, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the city must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code.⁵ However, the remaining information at issue does not constitute confidential CHRI. Accordingly, the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 also encompasses section 1702.284(a) of the Occupations Code, which provides:

Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the [Texas Private Security Board], to the alarm company to which the confidential records relate, or as otherwise required by state law or court order.

Occ. Code § 1702.284(a); *see also id.* § 1702.002(1)(A)(ii) (defining "alarm system" as electronic equipment and devices designed to detect or signal the occurrence of a robbery or other emergency). You assert a portion of the remaining information is excepted from disclosure under section 1702.284. However, we note section 1702.284 is not applicable to investigative information. *See* Act of June 19, 1983, 68th Leg., R.S., ch. 496, § 1, 1983 Tex. Gen. Laws 2915. Accordingly, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 1702.284 of the Occupations Code.

Section 552.101 also encompasses section 730.004 of the Transportation Code, which provides, "[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection

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with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the city compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the city and the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 also encompasses section 730.013 of the Transportation Code. Pursuant to section 730.007, personal information may be disclosed to an authorized recipient under certain circumstances, including a governmental agency collecting information to carry out its functions. *See id.* § 730.007(a)(2)(A)(I). Section 730.013 provides for purposes of chapter 730 of the Transportation Code:

- (a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.
- (b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

Id. § 730.013(a), (b). You do not represent the city received the information at issue from an agency that compiles or maintains motor vehicle records for purposes of section 730.013. Accordingly, the city may not withhold any part of the information at issue under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code. *See* ORD 478 at 2.

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 held common-law privacy protects the identifying information of a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection,

investigation, or prosecution of crime[.]” Gov’t Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested 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). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 52526 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The information at issue pertains to an internal investigation regarding an officer with the city’s police department (the “department”) that was purely administrative in nature. You have not explained how the department’s administrative investigation pertains to a pending criminal matter. Consequently, we find you have failed to show the applicability of section 552.108(a)(1) to this information, and the city may not withhold it on that ground.

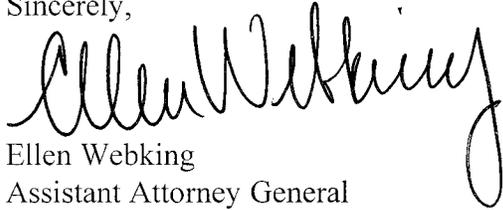
As noted above, you state you have redacted some information pursuant to section 552.130 of the Government Code. However, we note the remaining information contains additional information that is subject to section 552.130. Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. Upon review, we find the city must withhold the additional types of motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city 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 city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 of the Government Code. 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 550381

Enc. Submitted documents

c: Requestor
(w/o enclosures)