



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2015

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2015-08154

Dear Ms. Thomas:

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# 561363.

The City of Temple (the "city") received a request for information regarding previous contact between the city and a named individual or the named individual's family, including information pertaining to a specified incident, as well as information on whether or not the city is in the process of making a settlement with the named individual's family. You state the city will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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

¹We note the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e)(1)(D) (requiring governmental body to submit within fifteen business days of receiving request for information copy of information governmental body seeks to withhold or representative samples). Nonetheless, section 552.101 is a mandatory exception to disclosure that constitutes a compelling reason sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the applicability of this exception to the submitted information.

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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The doctrine of common-law privacy also protects a compilation of an individual's criminal history, which 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 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. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information).

The present request, in part, requires the city to compile unspecified law enforcement records concerning the individual named in the request, as well as the named individual's family, thus implicating these individuals' rights to privacy. Therefore, to the extent the city maintains any information that depicts the individuals at issue as suspects, arrested persons, or criminal defendants, it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy as compilations of the individuals' criminal histories. We note, however, you have submitted information in which none of the individuals at issue are listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and, thus, may not be withheld on that basis. However, we will address the applicability of the doctrine of common-law privacy to this information, and we will consider your argument against disclosure of this information. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked 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 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.

Fam. Code § 58.007(c). 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), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007 of the Family Code). 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 conduct at issue. *See id.* § 51.02(2). Upon review, we find the remaining information does not list a juvenile as a suspect, offender, or defendant. Further, the remaining information does not relate to juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Thus, the remaining information is not confidential under section 58.007(c) of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis.

In summary, to the extent the city maintains any information that depicts the individuals at issue as suspects, arrested persons, or criminal defendants, it must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy as compilations of the individuals’ criminal histories. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.²

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/>

²We note the remaining information contains a social security number. 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 Gov’t Code* § 552.147(b).

[ori_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 "Alley Latham", with a long, sweeping flourish extending to the right.

Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 561363

Enc. Submitted documents

c: Requestor
(w/o enclosures)