



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 30, 2015

Mr. Galen Gatten
Assistant City Attorney
Office of the City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-08366

Dear Mr. Gatten:

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# 561791 (PIR# W040205).

The City of Fort Worth (the "city") received a request for police records pertaining to a specified address, three named individuals, or the requestor during a specified time period. You state the city has provided some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Section 552.101 of the Government Code excepts from required 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 if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 met. *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.

The request requires the city to compile unspecified law enforcement records concerning the individuals, other than the requestor, named in the request and implicates those individuals' rights to privacy. We note the requestor may be the parent of one of the named individuals, who is a minor. A parent of a minor would be the minor's authorized representative and would have a special right of access to information that would ordinarily be withheld to protect the minor's common-law privacy interests. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is not a parent of the named minor individual, then to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is a parent of the named minor individual, then he has a special right of access to the compilation of his child's criminal history information, to the extent it exists, and that information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. In that instance, we will address the applicability of any exceptions that may apply to the requested information.

Section 552.101 of the Government Code also encompasses information made confidential 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 . . . 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). The submitted information was used or developed in an investigation of alleged child abuse. *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 this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Upon review, we find the information at issue is generally confidential under section 261.201(a) of the Family Code. The requestor, however, is a parent of one of the child victims listed in the submitted information, and the requestor is not suspected of having committed the alleged abuse. In this instance, the city may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the city must withhold the reporting parties’ identities, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Additionally, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You claim the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Furthermore, we note some of the remaining information is subject to section 552.130

of the Government Code.¹ We will, therefore, consider the applicability of sections 552.101 and 552.130 of the Government Code to the remaining information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in relevant 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.

...

(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; and

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

Id. § 58.007(c), (e), (j). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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). Upon review, we find the remaining information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Thus, this information is subject to section 58.007(c). In this instance, the requestor is a parent of one of the juvenile offenders at issue. Therefore, this requestor has a right to inspect information concerning the juvenile offender at issue under section 58.007(e), and the information may not be withheld from him 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 requestor’s child must be redacted. *See id.* § 58.007(j)(1). Accordingly, the city must withhold the juvenile offender and witness identifying information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Additionally, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). As previously noted, section 552.130 of the Government Code applies to some of the remaining information. Thus, we will address the applicability of section 552.130 of the Government Code to the remaining information.

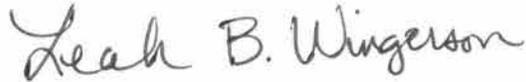
Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code* § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not a parent of the named minor individual, then to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is a parent of the named minor individual, the city must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code; (2) section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code; and (3) section 552.130 of the Government Code, and release the remaining information to this requestor.

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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 561791

Enc. Submitted documents

c: Requestor
(w/o enclosures)