



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2015

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

OR2015-11979

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# 567677 (City ID No. W041569).

The City of Fort Worth (the "city") received a request for information related to charges, reports, and arrests pertaining to two named individuals. You state the city has released some 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 and reviewed the submitted information.

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. Upon review, we find the present request requires the city to compile unspecified law enforcement records concerning the named individuals. Accordingly, we find the request implicates the named individuals' rights to privacy. Therefore, 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 in conjunction with common-law privacy. We note, however, the city has submitted information that does not list either named individual as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals. Thus, the city may not withhold this information under section 552.101 in conjunction with common-law privacy as a criminal history compilation.

Section 552.101 of the Government Code also encompasses information protected by 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 Chapter 552, Government Code, 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.

Fam. Code § 261.201(a). You state some of the information at issue was used in investigations of alleged or suspected child abuse or neglect conducted by the city's police department under chapter 261 of the Family Code. *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, we find the information we have marked is subject to chapter 261 of the Family Code. Therefore, we conclude the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

Section 552.101 of the Government Code also encompasses former section 58.007 of the Family Code. You claim the remaining information at issue is confidential pursuant to section 58.007(c) of the Family Code, which applies to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. However, we note section 58.007 is inapplicable in this instance because the conduct at issue occurred in 1984. Accordingly, we will address the applicability of former section 51.14 of the Family Code.

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to juvenile criminal conduct occurring before January 1, 1996, are governed by the former section 51.14 of the Family Code, which was continued in effect for that purpose.¹ The former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). A “child” is defined as a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). The information we have marked concerns juvenile conduct that occurred prior to January 1, 1996. Further, the requestor does not fall within one of the categories in former section 51.14(d) under which inspection of the records would be permitted. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

In summary, 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 in conjunction with common-law privacy. The city must

¹Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591.

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 and former section 51.14(d) of the Family Code.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 567677

Enc. Submitted documents

c: Requestor
(w/o enclosures)