



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-17560

Dear Mr. Trevino:

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# 576532 (Ref. No. W043201).

The City of Fort Worth (the "city") received a request for seven specified reports, all reports involving two named individuals, and all reports at a specified address. You state the city is releasing some information to the requestor. You state the city will redact certain e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You state the city will redact certain criminal history record information pursuant to the previous determination issued to the city in Open Records Letter No. 2013-22304 (2013).² You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

²Open Records Letter No. 2013-22304 is a previous determination issued to the city authorizing it to withhold Federal Bureau of Investigation numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without the necessity of requesting an attorney general decision.

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 (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 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.

The requestor asks, in part, for all information held by the city concerning two 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 any unspecified law enforcement records depicting either named individual 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, the requestor also asks for information pertaining to specified incidents. Because the requestor specifically asks for this information, it is not part of a compilation of either individual’s criminal history and may not be withheld on that basis. Further, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual’s criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information that is either specifically requested or in which neither of the named individuals is depicted as a suspect, arrestee, or criminal defendant. Therefore, this information is not confidential under common-law privacy as a compilation of common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that ground. Accordingly, we will address your arguments to withhold this information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in 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); *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 information we have indicated involves juvenile offenders or juvenile conduct indicating a need for supervision that occurred after September 1, 1997. It does not appear any of the exceptions in section 58.007 apply. Therefore, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³

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.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Id. § 261.201(a). Upon review, we find the information we have indicated was used or developed in an investigation conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). You have not indicated the city’s police department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information we have indicated is confidential under section 261.201 of the Family Code, and the city must withhold it under section 552.101 of the Government Code.⁴

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy, which protects the specific types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See Indus. Found.*, 540 S.W.2d at 685. 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See Open Records Decision No. 373 (1983)* (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note some of the submitted information pertains to a report of alleged sexual assault. In *Open Records Decision No. 393 (1983)*, this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. *ORD 393 at 2; see Open Records Decision No. 339 (1982); see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); *Open Records Decision No. 440 (1986)* (detailed descriptions of serious sexual offenses must be withheld). We also note dates of birth of members of the public are generally not highly intimate or embarrassing. *See Open Records Decision No. 455 at 7 (1987)* (home addresses, telephone numbers, dates of birth not protected under privacy).

The requestor in this case knows the identity of the alleged sexual assault victim. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim’s common-law right to privacy. Therefore, the city must withhold the report we have indicated in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find the information we have marked in the remaining information meets the standard articulated by the Texas Supreme Court in

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

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. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public interest. Although you reference *Paxton v. City of Dallas*, No. 03-00546-CV, 2015 WL 3394061 (Tex. App.—Austin May 22, 2015, pet. filed) (mem. op.), a petition for review was filed with the Texas Supreme Court on July 29, 2015. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

You state the city will redact the motor vehicle record information you have marked pursuant to section 552.130(c) of the Government Code.⁵ 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 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 motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

You state the city will redact access device and account numbers pursuant to section 552.136 of the Government Code.⁶ Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [[or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *See id.* § 552.136(a). Upon review, we find some of the information at issue consists of access device numbers for purposes of section 552.136 of the Government Code. Therefore, with the exception of the information we have marked for release, the city must withhold the access device and account numbers you have marked, and the additional account number we have marked, under section 552.136 of the Government Code. However, we find you have not explained how the information we have marked for release constitutes access device

⁵Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 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).

⁶Section 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* Gov't Code § 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).

numbers for purposes of section 552.136. Accordingly, you have failed to demonstrate the applicability of section 552.136 of the Government Code to this information and it may not be withheld on that basis.

You state the city will redact certain social security numbers under section 552.147(b) of the Government Code.⁷ Section 552.147 excepts from disclosure the social security number of a living person. *Id.* § 552.147. Upon review, we find some of the information at issue consists of social security numbers subject to section 552.147 of the Government Code. Therefore, with the exception of the information we have marked for release, the city may withhold the social security numbers you have marked under section 552.147 of the Government Code. However, we find you have not explained how the information we have marked for release constitutes a social security number subject to section 552.147. Accordingly, you have failed to demonstrate the applicability of section 552.147 of the Government Code to this information and it may not be withheld on that basis.

In summary, to the extent the city maintains any unspecified law enforcement records depicting a named individual 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 indicated 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 indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code. With the exception of the information we have marked for release, the city must withhold the access device and account numbers you have marked, and the additional account number we have marked, under section 552.136 of the Government Code. With the exception of the information we have marked for release, the city may withhold the social security numbers you have marked under section 552.147 of the Government Code. The city must release the remaining information.

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.

⁷Section 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).

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 black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 576532

Enc. Submitted documents

c: Requestor
(w/o enclosures)