



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Mr. James A. McKechnie
Assistant City Attorney II
Office of the City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2015-19367

Dear Mr. McKechnie:

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# 579619 (City ID# 446).

The Wichita Falls Police Department (the "department") received a request for all records involving a named individual, including records related to a specified offense. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 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 established. *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 this request requires the department to compile, in part, unspecified criminal history records concerning the individual named in the request, and thus, implicates her right to privacy. Therefore, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.

You have submitted records related to the offense specified in the request. Because the requestor specifically asks for this information, it does not implicate the privacy interest of the named individual and may not be withheld as a compilation of her criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will consider your arguments against the disclosure of this information.

Section 552.101 of the Governmental Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). We agree report number 15-050518 involves the investigation of alleged or suspected 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 chapter 261). You have not indicated the 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 related to report 15-050518 is confidential under section 261.201 of the Family Code and the department must withhold it under section 552.101 of the Government Code.

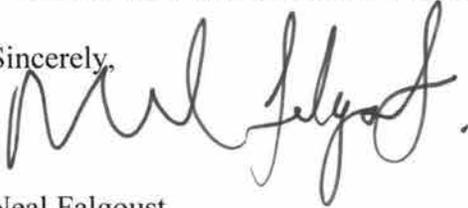
In summary, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department

must withhold any such information under section 552.101 in conjunction with common-law privacy. The department must withhold the information related to report 15-050518 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we do not address your remaining claimed exception.

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 black ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping underline.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 579619

Enc. Submitted documents

c: Requestor
(w/o enclosures)