



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2015

Ms. Stacie S. White
Counsel for the City of Saginaw
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2015-20903

Dear Ms. White:

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# 582290 (Request ID# 15-0618).

The Saginaw Police Department (the "department"), which you represent, received a request for call for service sheets pertaining to a named individual and two specified locations during a specified period of time. You claim the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim.

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 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. This office has found 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. 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 that 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.

The present request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the named individual is the requestor's spouse, and the requestor may be acting as the authorized representative of this individual. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the requestor is not acting as his spouse's authorized representative, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as his spouse's authorized representative, he has a special right of access to the compilation of his spouse's criminal history, to the extent it exists, and it may not be withheld under section 552.101 in conjunction with common-law privacy. In that instance, we will address your arguments against disclosure for any such information.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, 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[.]

Fam. Code § 261.201(a), (l)(2); Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(k)). We note some of the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect. *See* Fam. Code § 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); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (to be codified as an amendment to Fam. Code § 261.001(1)); Act of May 21, 2015, 84th Leg., R.S., ch. 432, § 1, 2015 Tex. Sess. Law Serv. 1686, 1686-87 (to be codified as an amendment to Fam. Code § 261.001(4)). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this instance, although the requestor is a parent of the child victim, the requestor is the authorized representative of the parent alleged to have committed the abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(k)). Therefore, the information at issue is confidential pursuant to section 261.201(a) of the Family Code and

must be withheld under section 552.101 of the Government Code.¹ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, we find you have failed to demonstrate how any portion of the remaining information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). We also find you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). See Fam. Code § 261.001(1), (4). Therefore, the department may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

As noted above, section 552.101 of the Government Code encompasses common-law privacy, which is subject to the two-part test described above. Types of information considered highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. 540 S.W.2d at 683. As noted above, the requestor may have a special right of access to his spouse's otherwise private information under section 552.023 of the Government Code. See Gov't Code § 552.023; ORD 481 at 4. Accordingly, if the requestor is acting as the authorized representative of his spouse, we find the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not acting as his spouse's authorized representative, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as his spouse's authorized representative, the department must 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 release to the requestor the remaining law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, to the extent they exist.

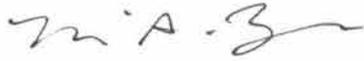
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

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 "N. A. Ybarra".

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 582290

Enc. Submitted documents

c: Requestor
(w/o enclosures)