



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2016

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-14995

Dear Ms. Mebane:

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# 616650 (PIR# W051028).

The City of Fort Worth (the "city") received a request for (1) information pertaining to a specified incident, (2) offense reports pertaining to four named individuals during a specified time period, and (3) offense reports pertaining to a specified address and involving three named individuals during a specified time period. We understand you will withhold information pursuant to the previous determinations issued in Open Records Letter Nos. 2011-15641 (2011) and 2016-00620 (2016).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have not submitted all the requested information. To the extent any additional responsive information existed on the date the city received this request, we

¹Open Records Letter No. 2011-15641 is a previous determination issued to the city authorizing it to withhold, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, an originating telephone number of a 9-1-1 caller furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision. Open Records Letter No. 2016-00620 is a previous determination issued to the City of Fort Worth authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code exempts 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 (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the request seeks unspecified law enforcement records concerning individuals named in the request. This request implicates the named individuals' right to privacy. Therefore, to the extent the city maintains law enforcement records, other than information pertaining to the specified incident, 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, this request also seeks information pertaining to a specified incident. Such a request does not implicate an individual's common-law right to privacy. Accordingly, the city may not withhold that information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information confidential under section 261.201 of the Family Code, which provides, in 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), (k), (l)(2). Upon review, we find the information we have indicated consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed as a result of an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. We note, however, the requestor, who is not alleged to have committed the alleged or suspected child abuse, may be a parent of the child victim at issue. *See id.* § 261.201(k). Thus, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child victim at issue, the city must withhold the information we indicated in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victim, the city may not withhold the information at issue from the requestor under section 261.201(a). *See id.* In that instance, section 261.201(l)(2) provides that any information that is excepted from required disclosure

under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). We note some of the remaining information is subject to sections 552.101 and 552.130 of the Government Code. Therefore, in accordance with section 261.201(1)(2) of the Family Code, we will consider the applicability of these exceptions to the remaining information.

You state you will redact information under section 552.130(c) of the Government Code. Section 552.130 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(a). We note the requestor has a right of access to the requestor's own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). As such, the city may not withhold the requestor's motor vehicle record information under section 552.130. Accordingly, to the extent the information we marked does not belong to the requestor, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information you marked is subject to section 552.130. Thus, the city may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Indus. Found.*, 540 S.W.2d at 685 (Tex. 1976). This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 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 261.201(a) of the Family Code if the requestor is not a parent, managing conservator, or other legal representative of the child victim. If the requestor is a parent, managing conservator, or other legal representative of the child victim at issue, then the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code, to the extent the information we marked does not belong to the requestor, and the information we marked

under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

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 "Ashley Crutchfield". The signature is fluid and cursive, with a large initial "A" and "C".

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 616650

Enc. Submitted documents

c: Requestor
(w/o enclosures)