



KEN TAYLOR
ATTORNEY GENERAL OF TEXAS

August 3, 2016

Mr. Robert Viña
Counsel for the Rio Hondo Independent School District
Walsh, Anderson, Gallegos, Green & Treviño, P.C.
105 East 3rd Street
Weslaco, Texas 78596

OR2016-17458

Dear Mr. Viña:

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# 621045.

The Rio Hondo Independent School District (the "district"), which you represent, received two requests for information pertaining to two specified incidents. You state you have released basic information pursuant to section 552.108(c) of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.111, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-21132 (2014). We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the district may continue to rely on Open Records Letter No. 2014-21132 as a previous determination and withhold or release the identical information in accordance with that ruling.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was

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

based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments for the information not at issue in the prior ruling.

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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 district asserts the information is confidential as a private compilation of criminal history. Upon review, we find the present request does not seek a compilation of an individual’s criminal history; rather, the request is for information pertaining to specified incidents. Such a request does not implicate an individual’s common-law right to privacy. Accordingly, the district may not withhold any of the submitted information as criminal history compilation under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, 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 submitted information not subject to the prior ruling was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code by the department. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family 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). Thus, the information at issue is generally confidential under section 261.201(a) of the Family Code. You inform us, however, the requestor is the legal representative of the child victim. Furthermore, the requestor is not alleged to have committed the alleged or suspected abuse. Accordingly, the district may not withhold the information at issue from the requestor under section 261.201(a). *Id.* § 261.201(k). Section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will consider your remaining arguments against disclosure for the information not subject to the prior ruling.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection,

investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706(Tex. 1977). You state, and provide an affidavit demonstrating, the submitted information pertains to open criminal investigations by the department. Based on your representation, we conclude the release of the submitted information not subject to the prior ruling would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we find the district may withhold the submitted information not subject to the prior ruling under section 552.108(a)(1) of the Government Code.²

In summary, the district may continue to rely on Open Records Letter No. 2014-21132 as a previous determination and withhold or release the identical information in accordance with that ruling. The district may withhold the submitted information not subject to the prior ruling under section 552.108(a)(1) of the Government 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 621045

Enc. Submitted documents

c: Requestor
(w/o enclosures)