



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Mr. L. Brian Narvaez
Counsel for the Town of Little Elm
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2016-20200

Dear Mr. Narvaez:

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# 625756.

The Town of Little Elm (the "town"), which you represent, received two requests from different requestors for information related to a specified address. The first requestor seeks all reports involving either of two named individuals at the specified address. The second requestor seeks reports related to four specified incidents at the specified address. You state the town will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 of the Government Code 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

¹Section 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).

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. Upon review, we find the first request requires the town to compile unspecified law enforcement records concerning the named individuals. Accordingly, we find the first request implicates the named individuals' rights to privacy. Therefore, to the extent the town maintains law enforcement records depicting either of the named individuals as a suspect, arrestee or criminal defendant, the town must withhold such information from the first requestor under section 552.101 in conjunction with common-law privacy. We note, however, the second requestor seeks information pertaining to specified incidents. Because the second requestor specifically asks for this information, it is not part of a compilation of criminal history and may not be withheld on that basis. Accordingly, the town may not withhold this information from the second requestor as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy. We will consider your arguments against disclosure of the information at issue in the second requestor's request.

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), (k), (l)(2). We note information responsive to the second requestor's request contains two reports of alleged or suspected child abuse or neglect made to the town's police department. *See id.* §§ 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), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find these reports are subject to chapter 261 of the Family Code. In this instance, the second requestor is a parent of the child victim listed in the information at issue. However, we note the second requestor is alleged to have committed the alleged or suspected abuse or neglect in one of the reports at issue. Thus, the second requestor does not have a right of access to that report under section 261.201(k). *See id.* § 261.201(k). Therefore, we conclude the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we note the second requestor is not alleged to have committed the alleged or suspected abuse or neglect in the remaining report at issue. Thus, the town may not withhold the remaining report at issue from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Fam. Code § 261.201(k). Section 261.201(l)(2), however, 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). Therefore, we will consider whether the information at issue is otherwise excepted from disclosure under the Act.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

As noted, under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy.

In this instance, the second requestor knows the identity of the individual involved in one of the remaining reports at issue, as well as the nature of the incident. Therefore, withholding only the individual's identity or certain details of this incident from the second requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the town must withhold the information we have marked in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the town may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the town maintains law enforcement records depicting either of the named individuals as a suspect, arrestee or criminal defendant, the town must withhold such information from the first requestor under section 552.101 in conjunction with common-law privacy. The town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code from the second requestor. The town must withhold the information we have marked in its entirety from the second requestor, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The town must release the remaining information to the second requestor.

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 "J. Behnke", with a stylized flourish at the end.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 625756

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)