



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2016

Mr. Richard A. McCracken
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-12404

Dear Mr. McCracken:

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# 612214 (PIR No. W050156).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual, including a specified case. You claim the requested information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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. Upon review, we find

the present request, in part, requires the department to compile unspecified law enforcement records concerning the named individual. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. However, we find the part of the request seeking a specified case does not implicate the named individual's privacy interests. Thus, case number 03057969 is not part of a criminal history compilation protected by common-law privacy and may not be withheld under section 552.101 on that basis. Accordingly, we will consider your arguments for this information.

Section 552.101 of the Government Code also encompasses information made confidential by section 261.201 of the Family Code, which provides, in relevant part, as follows:

(a) [T]he 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information relating to case number 03057969 consists of information used or developed in an investigation of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, case number 03057969 falls within the scope of section 261.201 of the Family Code. *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 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). As we have no indication the department has adopted a rule governing the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we conclude case number 03057969 is confidential pursuant to section 261.201(a) of the Family Code, and the department must withhold it under section 552.101 of the Government Code on that basis.¹

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

In summary, to the extent the department maintains law enforcement records other than case number 03057969 depicting 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. The department must withhold case number 03057969 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

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 Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 612214

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Although the requestor is a representative of the State of Washington Department of Social & Health Services Division of Children & Family Services, she does not indicate she has a right of access to this information under state or federal law. See Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).