



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 26, 2017

Ms. Julie P. Doshier  
Counsel for City of DeSoto  
Nichols, Jackson, Dillard, Hager, and Smith, L.L.P.  
1800 Ross Tower  
500 North Akard  
Dallas, Texas 75201

OR2017-01797

Dear Ms. Doshier:

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# 643191 (File# 81249).

The City of DeSoto (the "city"), which you represent, received a request for all police reports and jail records for a named individual, including a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 submitted information pertains to the specified arrest and, therefore, the named individual's common-law right to privacy is not implicated. Accordingly, the city may not withhold the submitted 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 statutes that make information confidential, such as section 261.201(a) of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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 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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed by the city's police department (the "department") in an investigation of alleged or suspected child abuse or neglect under chapter 261. *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). Thus, the submitted information is subject to section 261.201. As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the city must generally withhold the submitted information in its entirety under section 552.101 in conjunction with section 261.201. *See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).*

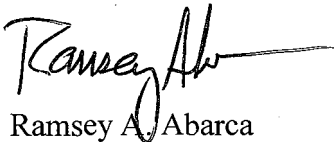
However, section 261.201 provides information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." Fam. Code § 261.201(a). Subchapter E of chapter 264 of the Family Code concerns the establishment and duties of children's advocacy centers. *See id.* §§ 264.401-411. Section 264.405 of the Family Code directs children's advocacy centers to provide services for victims of child abuse and their families. *Id.* § 264.405. Furthermore, section 264.408(c) of the Family Code provides "a law enforcement agency . . . may share with a [children's advocacy] center information that is confidential under Section 261.201 as needed to provide services" under chapter 264 of the Family Code. *Id.* § 264.408(c).

In this instance, the requestor is a representative of the Dallas Court Appointed Special Advocates (“CASA”). However, the requestor does not state whether the requested report is sought for the purposes of providing services under chapter 264 of the Family Code. Therefore, we must rule conditionally. If the city determines the information at issue is needed to provide services under chapter 264, then the city may release the submitted information to this requestor pursuant to section 264.408(c) of the Family Code.<sup>1</sup> We note information shared with or provided to CASA under section 264.408(c) retains its confidentiality under section 261.201 of the Family Code. *See id.* If, however, the city does not determine the information at issue is needed for services under chapter 264, then it may not release the information at issue on that ground, and the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201.<sup>2</sup>

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](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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/bw

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<sup>1</sup> Although you also raise section 552.108 of the Government Code for the submitted information, the requestor’s specific statutory right of access prevails over the general exceptions in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

<sup>2</sup> In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 643191

Enc. Submitted documents

c: Requestor  
(w/o enclosures)