



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Mr. Marc J. Schnall  
Counsel for the City of Hill Country Village  
Langley & Banack, Inc.  
745 East Mulberry, Suite 900  
San Antonio, Texas 78212

OR2017-06077

Dear Mr. Schnall:

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# 650825.

The City of Hill Country Village (the "city"), which you represent, received a request for all reports involving a named individual at a specified address. You state the city will release some information to the requestor. Additionally, you state the city will redact public citizens' dates of birth not belonging to the requestor pursuant to Open Records Letter No. 2016-21857 (2016).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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

---

<sup>1</sup>Open Records Letter No. 2016-21857 authorizes the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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) (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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the individual and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses 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 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). You state, and we agree, incident report numbers 160718, 160727, and 170020 were used or developed in investigations of alleged or suspected child abuse or neglect. *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 this information is subject to section 261.201 of the Family Code. We note the requestor is a parent of the child victim listed in the information at issue. However, we note the requestor is alleged to have committed the suspected abuse or neglect in incident report numbers 160718 and 160727. Thus, the requestor does not have a right of access to these reports under section 261.201(k). *See id.* § 261.201(k). Therefore, the city must withhold incident reports 160718 and 160727 under section 552.101 of the Government Code in

conjunction with section 261.201(a) of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the requestor is not alleged to have committed the suspected abuse or neglect in incident report number 170020. Thus, pursuant to section 261.201(k), incident report number 170020 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). The city seeks to withhold the reporting parties' identities in report number 170020 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. However, we note one of the reporting parties is a child of the requestor who is not the victim of the alleged or suspected abuse or neglect. Thus, we find to construe section 261.201(l)(3) to require a governmental body to withhold the identifying information of a reporting party from a requestor with a section 261.201(k) right of access who is the parent of the reporting party would lead to an absurd result that the legislature could not have intended. *See Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). Therefore, the city may not withhold this individual's identifying information from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. However, the requestor does not have a right of access to the other reporting party's identifying information. Accordingly, we find the city must withhold the identifying information of the other reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Additionally, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider the applicability of other exceptions to disclosure of the remaining information in incident report number 170020.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411, of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal

---

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

justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Upon review, we find you have failed to demonstrate any portion of the information at issue constitutes CHRI for purposes of chapter 411. Accordingly, none of the information at issue may be withheld under section 552.101 on that basis.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold incident reports 160718 and 160727 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the reporting party's identifying information we have marked in report number 170020 under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The city must release the remaining information.<sup>3</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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

---

<sup>3</sup> We note that, because the requestor has a special right of access to some of the information being released in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 650825

Enc. Submitted documents

c: Requestor  
(w/o enclosures)