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ATTORNEY GENERAL OF TEXAS

April 11, 2017

Ms. Stacie S. White  
Counsel for City of Benbrook  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2017-07553

Dear Ms. White:

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# 657175.

The Benbrook Police Department (the "department"), which you represent, received a request for information pertaining to a specified address, a named individual, and the requestor since August of 2015 (the "first requestor"). The department received a subsequent request from a different requestor for 9-1-1 call recordings and police reports pertaining to the same address for a specified period of time (the "second requestor"). The department claims the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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 fact, 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 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.

The first requestor asks for all information held by the department concerning herself and another named individual. This requestor has a right of access to her own and her children's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, the department has not submitted documents that list the other named individual as a suspect, arrestee, or criminal defendant. We also note the second requestor does not ask for unspecified information pertaining to a named individual. Thus, none of the submitted information is confidential under common-law privacy as a compilation of an individual's criminal history, and the department may not withhold it under section 552.101 on that ground.

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 [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.

...

(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). The department asserts the submitted information was used or developed in investigations under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we find case numbers 1500017399 and 1700001704 and incident number 1600007069 are within the scope of section 261.201(a). The department does not indicate it has adopted a rule that governs the release of this type of information. Accordingly, we assume no such rule exists. Given that assumption, the department must withhold these reports from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, the first requestor is a parent of the child victims. The first requestor was suspected of committing the alleged or suspected abuse in case number 1500017399 and, thus, does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold case number 1500017399 from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Nonetheless, the first requestor is not alleged to have committed the suspected abuse in the remaining reports at issue. Therefore, the department may not withhold these reports from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(2) provides 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). Consequently, we must determine whether any of the information in these reports must otherwise be withheld from the first requestor under the Act.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Indus. Found.*, 540 S.W.2d at 683. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, with the exception of the dates of birth to

which the first requestor has a right of access under section 552.023(a) of the Government Code, which the department must release to her, the department must withhold the dates of birth of private citizens under section 552.101 of the Government Code in conjunction with common-law privacy.

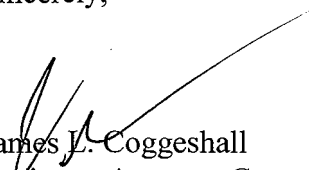
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The department must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

To conclude, the department must withhold from the first requestor case number 1500017399 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, and must withhold from the second requestor case numbers 1500017399 and 1700001704 and incident number 1600007069 on that same ground. With the exception of the dates of birth to which the first requestor has a right of access under section 552.023(a) of the Government Code, which the department must release to her, the department must withhold the dates of birth of private citizens under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information marked under section 552.130 of the Government Code. The department must release the remaining information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 657175

Enc. Submitted documents

c: Requestor  
(w/o enclosures)