



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 19, 2017

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2017-08290

Dear Ms. Quinn:

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# 653861 (Ref. No. 17-441).

The Cedar Park Police Department (the "department") received a request for all 9-1-1 calls or police reports pertaining to the requestor's client and any of four named individuals at a specified address. The department states it will release some information. The department states it will redact motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department claims 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

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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *Id.* § 552.147(b).

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. This office has found 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. United States 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. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

We note the present request requires the department to compile unspecified law enforcement records concerning the four named individuals. Thus, we find the request generally implicates these individuals' rights to privacy in compilations of their criminal histories. However, we note the requestor also asks for information held by the department involving the requestor's client. This part of the request seeks specified records involving the requestor's client and any such information may not be withheld as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the information involving the requestor's client, to the extent the department maintains law enforcement records depicting any of the four named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. We note the department has submitted information that either involves the requestor's client or does not depict any of the four named individuals as a suspect, arrestee, or criminal defendant. Thus, this information 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. Therefore, we will address the department's arguments against the disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides 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). We note Exhibits B and D were used or developed in investigations of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also 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). Accordingly, we find the information at issue is generally confidential under section 261.201 of the Family Code. We note, however, the requestor’s client is a parent of the child victim listed in the reports, and the parent is not alleged to have committed the suspected abuse. Thus, Exhibits B and D may not be withheld from this requestor under section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l)(2) 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). The department raises section 552.108 of the Government Code as an

exception to disclosure. Thus, we will consider the applicability of this exception to Exhibits B and D.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states Exhibits B and D pertain to investigations that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold Exhibits B and D under section 552.108(a)(2) of the Government Code.²

We note portions of the remaining information are subject to common-law privacy. The two-prong test for common-law privacy was discussed above. *See Indus. Found.*, 540 S.W.2d at 681-82. 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. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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, the department must withhold the dates of birth it has marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information involving the requestor's client, to the extent the department maintains law enforcement records depicting any of the four named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the department may withhold Exhibits B and D under section 552.108(a)(2) of the Government Code. The department must withhold the dates of birth it has marked in the remaining information under section 552.101 of the Government

²As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information.

Code in conjunction with common-law privacy. The remaining information must be released.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 653861

Enc. Submitted documents

c: Requestor
(w/o enclosures)