



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2017

Mr. D. Brett Brewer
Counsel for the Rusk Police Department
The Norman Law Firm
215 East Commerce, 2nd Floor
Jacksonville, Texas 75766

OR2017-09986

Dear Mr. Brewer:

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# 657150.

The Rusk Police Department (the "department"), which you represent, received a request for all information pertaining to six named individuals and a specified address.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.137, 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,

¹You state, and provide documentation showing, the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. 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.

The present requests require the department to compile unspecified law enforcement records concerning the individuals named in the request, and thus, implicates the named individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting any of the named individuals as suspects, arrestees, or criminal defendants, the department must withhold 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 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 that does not list any of the named individuals as suspects, arrestees, or criminal defendants. This information does not consist of a compilation of the named individuals' criminal history, and it may not be withheld as such under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by statutes such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Some of the information at issue pertains to juvenile suspects who were ten years of age or older and under seventeen years of age at the time of the incidents that are the subject of the reports at issue. Further, this information involves delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear that any of the exceptions in section 58.007 apply; therefore, the information at issue is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the department must withhold the information we have indicated under section 552.101 of the Government Code on this basis.² However, we find none of the remaining reports at issue identify a juvenile suspect or offender for the purposes of section 58.007. Accordingly, we find you have not demonstrated the applicability of section 58.007(c) to this information; thus, the department may not withhold the remaining information at issue under section 552.101 of the Government Code on this basis.

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 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.

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

Id. § 261.201(a). Upon review, we agree some of the information at issue was used or developed in investigations by the department of alleged or suspected child abuse or neglect 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). Thus, the information at issue is within the scope of section 261.201(a) of the Family Code. There is no indication the department has adopted a rule that governs the release of this type of information. Accordingly, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Government Code.³ However, we find you have failed to demonstrate the remaining information at issue is confidential pursuant to section 261.201(a) of the Family Code, and the department may not withhold this information under section 552.101 of the Government Code on that basis.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See 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.*; *see also id.* § 552.301(e)(1)(A). You state the remaining information pertains to criminal cases that concluded in results other than convictions or deferred adjudications. Based on your representations, we find section 552.108(a)(2) is applicable to this information.

However, as you acknowledge, section 552.108(a)(2) 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth. *See id.* at 3-4. Thus, with the exception of basic information, the department may withhold the remaining information, which we have indicated, under section 552.108(a)(2) of the Government Code.⁴

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the basic information, we find you have failed to demonstrate this information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold the basic information under section 552.101 of the Government Code on the basis of constitutional privacy.

As noted above, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although you assert the basic information is confidential in its entirety pursuant to common-law privacy, we find this is not a situation where all of this information must be withheld to protect any individual's privacy interest. Further, we find you have failed to demonstrate this information is highly intimate or embarrassing and not of legitimate public concern. Therefore, we conclude the department may not withhold the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the department maintains law enforcement records depicting any of the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which the department must release, the department may withhold the information we have indicated under section 552.108(a)(2) of the Government Code.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 657150

Enc. Submitted documents

c: Requestor
(w/o enclosures)