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ATTORNEY GENERAL OF TEXAS

June 6, 2017

Ms. Debra L. Goetz
Counsel for the McAllen Independent School District
Atlas, Hall & Rodriguez, LLP
P.O. Box 3725
McAllen, Texas 78502-3725

OR2017-12331

Dear Ms. Goetz:

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# 660770 (ORR No. M000612-030617).

The McAllen Independent School District (the "district"), which you represent, received a request for all information regarding a named individual, including information pertaining to a specified incident. You claim the requested 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, a portion of which is a representative sample.¹

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 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

The present request, in part, requires the district to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. However, the requestor also is seeking a specific report. This portion of the request does not implicate the named individual's right to privacy. Accordingly, the specifically requested report may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation. However, to the extent the district maintains other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the district must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We will address your arguments against disclosure of the specified report.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(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.

Fam. Code § 261.201(a). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the district's police department (the

“department”) is such an agency. Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse by the department. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *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 disabilities of minority removed for general purposes). Accordingly, we find this information falls within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

In summary, to the extent the district maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the district must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,


Britni Ramirez
Assistant Attorney General
Open Records Division

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

Ref: ID# 660770

Enc. Submitted documents

c: Requestor
(w/o enclosures)