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ATTORNEY GENERAL OF TEXAS

June 22, 2017

Mr. Darrel G-M Noga
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OR2017-13954

Dear Mr. Noga:

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# 662834 (Request Nos. W002558-040217, W002634-050517, and W002665-052317).

The City of Coppell (the "city"), which you represent, received two requests from the same requestor for information pertaining to herself and her minor child. The city received an additional request, from a different requestor, for all information pertaining to the first requestor, and specified addresses over a specified period of time. You state you have released some information. You claim the submitted 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.

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 city concerning herself and her minor child. This requestor has a right of access to her own and her minor child's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, although the second requestor, in part, seeks all information pertaining to the first requestor, the city has not submitted documents that list the first requestor as a suspect, arrestee, or criminal defendant. Thus, none of the submitted information is confidential under common-law privacy as a compilation of criminal history, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses 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). Section 58.007(c) provides 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 when the conduct occurred. *See id.* § 51.02(2). Upon review, we conclude incident reports 16009228, 16009248, and 16009249 consist of law enforcement records involving juvenile delinquent conduct or

conduct indicating a need for supervision occurring after September 1, 1997. Accordingly, the information at issue is subject to section 58.007(c). *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, incident reports 16009228, 16009248, and 16009249 must be withheld in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

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:

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

...

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

Id. § 261.201(a), (k), (l)(2). Upon review, we find incident report 17000192 was used or developed in an investigation 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). Accordingly, we find incident report 17000192 is within the scope of section 261.201(a). The city 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 city must withhold this report from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, the first requestor is a parent of the child victim in incident report 17000192 and is not alleged to have committed the suspected abuse or neglect. Therefore, the city may not withhold this report from the first requestor on the basis of section 261.201(a). *See* Fam. Code § 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). Therefore, we will address the city’s remaining arguments against disclosure of incident report 17000192 from the first requestor.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report 17000192 relates to a pending criminal investigation. Based on your representation and our review, we find release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree that section 552.108(a)(1) is applicable to incident report 17000192.

However, we note, and you acknowledge, section 552.108 does not except from disclosure basic information about a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186–87; Open

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue in regards to the second requestor.

Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of basic information, the city may withhold incident report 17000192 from the first requestor under section 552.108(a)(1) of the Government Code.

As stated above, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which subject to the two part test discussed above. *See Indus. Found.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987)*. The 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.). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy.

In this instance, although you claim incident report 17012743 is protected in its entirety by common-law privacy from the second requestor, you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on that basis. Upon review, however, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked in incident report 17012743 from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note, and you acknowledge, the first requestor is the individual to whom the information at issue pertains. Thus, the first requestor has a right of access pursuant to section 552.023 of the Government Code to the information at issue, and the city may not withhold incident report 17012743 from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. *See Gov't Code* § 552.023(a); *see* ORD 481 at 4. Further, the city has failed to demonstrate any other portions of the remaining information are highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the city may not withhold any other portions of the remaining information under section 552.101 in conjunction with common-law privacy.

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. ORD 455 at 4. The first type 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 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information in incident report 17012743, we find you have failed to demonstrate any portion of the information at issue falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 of Government Code on the basis of constitutional privacy.

In summary, the city must withhold incident reports 16009228, 16009248, and 16009249 under section 552.101 of the Government Code and in conjunction with section 58.007(c) of the Family Code. The city must withhold incident report 17000192 from the second requestor 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, the city may withhold incident report 17000192 from the first requestor under section 552.108(a)(1) of the Government Code. The city must withhold the information we marked in incident report 17012743 from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.³

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,



D. Michelle Case
Attorney
Open Records Division

DMC/nmd

³We note the first requestor has a right of access to some of the information being released. *See* Fam. Code § 261.201(k); *See* Gov’t Code § 552.023(a); ORD 481. Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

Ref: ID# 662834

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)