



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 5, 2017

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2017-22732

Dear Ms. Pemberton:

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# 678952 (PIR# W0023003).

The Killeen Police Department (the "department") received a request for information pertaining to a named individual at a specified address. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."<sup>1</sup> 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 facts 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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 requestor asks for all information held by the department concerning a named individual. Therefore, to the extent the department maintains any unspecified law enforcement information depicting the named individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure 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 part of 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 in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the individual and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 261.201 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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . 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). Upon review, we find report numbers 11-015463, 14-014623 and 14-009859 were used or developed in investigations conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *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 of Family Code). You have not indicated the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, report number 14-014623 is confidential under section 261.201 of the Family Code, and the department must withhold it under section 552.101 of the Government Code.<sup>2</sup> However, the requestor is a parent of the alleged child victims at issue in report numbers 11-015463 and 14-009859 and is not accused of committing the alleged or suspected child abuse or neglect. Thus, the requestor has a right of access to report numbers 11-015463 and 14-009859 under section 261.201(k), and the department may not withhold report numbers 11-015463 and 14-009859 from this requestor on the basis of section 261.201(a). However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments against the disclosure of report numbers 11-015463 and 14-009859.

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);

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

*see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 16-000584 pertains to a pending criminal investigation or prosecution. Based on this representation, we conclude section 552.108(a)(1) is generally applicable to report number 16-000584. *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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 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.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 11-015463, 14-007675, 14-007659, 14-009859, and 15-010302 pertain to closed cases that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to report numbers 11-015463, 14-007675, 14-007659, 14-009859, and 15-010302.

However, as you acknowledge, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold report number 16-000584 under section 552.108(a)(1) and report numbers 11-015463, 14-007675, 14-007659, and 15-010302 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the department maintains any unspecified law enforcement information depicting the named individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 14-014623 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold report numbers report number 16-000584 under section 552.108(a)(1) of the Government Code and report numbers 11-015463, 14-007675, 14-007659, 14-009859, and 15-010302 under section 552.108(a)(2) of the Government Code. The remaining information must be released.<sup>3</sup>

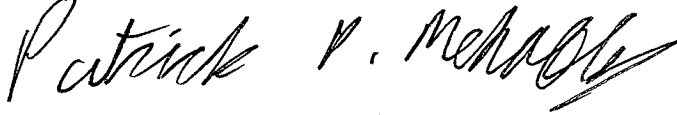
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<sup>3</sup>Because the requestor has a right of access to some of the information, the department must again seek a decision from this office if it receives a request for this information from a different requestor. *See* Fam. Code § 261.201(k); Gov't Code § 552.023.

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,

A handwritten signature in black ink that reads "Patrick P. Mehaffy". The signature is written in a cursive, flowing style.

Patrick P. Mehaffy  
Attorney  
Open Records Division

PPM/eb

Ref: ID# 678952

Enc. Submitted documents

c: Requestor  
(w/o enclosures)