



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2017

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2017-22781

Dear Ms. Brown:

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# 680729 (Plano ORR# GOLS080417).

The Plano Police Department (the "department") received two requests from the first requestor for all information related to the first requestor at a specified address over a specified time period, including information related to a specified incident. A second requestor also requested all information related to the first requestor, as well as an additional named individual, at a specified address over a specified time period. 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.

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 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 second requestor's request requires the department to compile unspecified law enforcement records concerning the first requestor and an additional named individual, thus implicating the individuals' rights to privacy. Accordingly, to the extent the department maintains law enforcement records depicting the first requestor or the additional named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.¹

We note the first requestor's request also requires the department to compile unspecified law enforcement records concerning the first requestor. However, the first requestor seeks records pertaining to himself. This portion of the request does not implicate the first requestor's right to privacy. *See* Gov't Code § 552.023(a), (b) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”): Open Records Decision No. 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, to the extent unspecified law enforcement records exist depicting the first requestor as a suspect, arrestee, or criminal defendant, such records may not be withheld from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation.

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 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:

¹As we make this determination, we need not consider your remaining arguments against disclosure of the requested information to the second requestor.

(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.

Fam. Code § 261.201(a), (k). Upon review, we find the specifically-requested information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is 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. Although the first requestor is the parent of the child victims named in the information at issue, the first requestor is alleged or suspected to have committed the abuse or neglect. Thus, the first requestor does not have a right of access to the information at issue under section 261.201(k). *Id.* § 261.201(k). Accordingly, the department must withhold the specifically-requested report in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

In summary, to the extent the department maintains law enforcement records depicting the first requestor or the additional named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the specifically-requested report in its entirety from the first

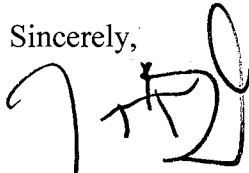
²As our ruling is dispositive for this information, we need not consider your remaining argument against disclosure from the first requestor.

requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,

A handwritten signature in black ink, appearing to read 'J. Behnke', written over a faint, illegible typed name.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/gw

Ref: ID# 680729

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)