



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2017

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

OR2017-25758

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# 684292 (ORR #W023259).

The Killeen Police Department (the "department") received a request for information pertaining to a specified address and two named individuals during a specified time period. You state the department has released some information to the requestor. 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 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 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) (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 requires the department to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any 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 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 individuals are not depicted as a suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the individuals 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 protected by other statutes, such as 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 Chapter 552, Government Code, 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:

...

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the some of the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” 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). Thus, the information at issue is subject to section 261.201 of the Family Code. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ We note, however, the requestor is the parent of the child victim named in report numbers 16-000203 and 17-007427. Furthermore, the requestor is not alleged to have committed the alleged abuse or neglect. Therefore, report numbers 16-000203 and 17-007427 may not be withheld from the requestor under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(3) provides the identity of the reporting party must be withheld. Therefore, the department must withhold the identifying information of the reporting parties, which we marked, under section 552.101 in conjunction with section 261.201(l)(3). In addition, section 261.201(l)(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(l)(2). Thus, we will address your remaining argument against disclosure of report numbers 16-000203 and 17-007427.

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

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state report numbers 09-007498, 16-000203, and 17-007427 relate to criminal investigations that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note basic information includes a detailed description of the offense and the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant, or witnesses. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report numbers 09-007498, 16-000203, and 17-007427 under section 552.108(a)(2) of the Government Code. However, in releasing basic information pertaining to report numbers 16-000203 and 17-007427, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

In summary, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked 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 department may withhold report numbers 09-007498, 16-000203, and 17-007427 under section 552.108(a)(2) of the Government Code. However, in releasing basic information pertaining to report numbers 16-000203 and 17-007427, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.²

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.

²Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 684292

Enc. Submitted documents

c: Requestor
(w/o enclosures)