



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Ms. Amanda Ruddy
Deputy City Clerk
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2019-19127

Dear Ms. Ruddy:

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# 775197 (City ID # 383).

The City of Wichita Falls (the "city") received a request for all records pertaining to a named individual, including three specified incidents. You state the city 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.

Initially, we note some of the submitted information, which we marked, is not responsive to the request for information because it does not pertain to the named individual. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

Next, we note you have not submitted information pertaining to two of the incidents specified by the requestor. To the extent any information responsive to this portion of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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) (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, in part, for all information held by the city concerning the named individual. Therefore, to the extent the city maintains any unspecified law enforcement information depicting the 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, the requestor also asks for information pertaining to specific incidents. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. Further, 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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). Upon review, we find report number 04-102190 was used or developed in an investigation 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 confidential under section 261.201. Accordingly, the city must withhold report number 04-102190 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.008). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find report numbers 98-100610 and 99-012304 involve delinquent conduct or conduct indicating a need for supervision. We note report number 99-012304 involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, the city must withhold report number 99-012304 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.¹ However, we are unable to determine the age of the suspect mentioned in report number 98-100610. Accordingly, we

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

must rule conditionally. If report number 98-100610 involves a suspect who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.008 apply, the city must withhold report number 98-100610 in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the suspect at issue was under ten years of age or seventeen years of age or older at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and the city may not withhold any portion of report number 98-100610 under section 552.101 of the Government Code on that basis. In that event, we will address your arguments against disclosure of this information.

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. Gov't Code § 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); Open Records Decision No. 434 (1986). You state report numbers 98-100610, 99-100832, 00-080026, 03-070907, 04-102188, 06-060325, and 06-072129 pertain to criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold report numbers 98-100610, 99-100832, 00-080026, 03-070907, 04-102188, 06-060325, and 06-072129 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the city maintains any unspecified law enforcement information depicting the 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 city must withhold report number 04-102190 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold report number 99-012304 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If report number 98-100610 involves a suspect who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the city must withhold report number 98-100610 in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If report number 98-100610 involves a suspect who was under ten years of age or seventeen years of age or older at the time of the conduct, then, with the exception of basic information, which must be released, the city may withhold report number 98-100610 under section 552.108(a)(2) of the Government Code. With the

exception of basic information, which must be released, the city may withhold report numbers 99-100832, 00-080026, 03-070907, 04-102188, 06-060325, and 06-072129 under section 552.108(a)(2) of the Government 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.

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/gw

Ref: ID# 775197

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor is a representative of Cleveland County Foster Care and Adoptions for the Oklahoma Department of Human Services. However, the requestor has not directed our attention to any federal or state law that would authorize the release of the requested records to her.