



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2020

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2020-08509

Dear Mr. Kopp:

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# 817367 (COSA File No. W298095).

The City of San Antonio (the "city") received a request for any reports regarding the requestor and a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 private 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.

Upon review, we find the present request, in part, requires the city to compile unspecified law enforcement records concerning the named individual other than the requestor. We find this part of the request generally implicates the other named individual's right to privacy. However, we note the requestor also seeks information involving herself. This part of the request seeks specified records involving the requestor and does not implicate the other named individual's right to privacy. Further, the requestor has a special right of access to her own information that would ordinarily be withheld to protect her privacy interests. *See* Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, information relating to the requestor may not be withheld from her as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Therefore, we will address your argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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). You argue report number SAPD13237221 relates to an investigation of alleged or suspected child abuse or neglect conducted by the city's police department. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of section 261.201 as a 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). Upon review, we agree report number SAPD13237221 is subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victim listed in the information at issue, but the requestor is alleged to have committed the alleged abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *Id.* § 261.201(k). Accordingly, the city must withhold report number SAPD13237221 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Thus, the city must withhold the public citizens' dates of birth we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130(a). Accordingly, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

In summary, the city must withhold report number SAPD13237221 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the public citizens' dates of birth we indicated under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record

¹ 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, 480 (1987), 470 (1987).*

information we indicated under section 552.130 of the Government Code. The city must release the remaining information.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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jlbm

Ref: ID# 817367

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the information being released contains social security numbers that do not belong to the requestor. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). We also note the requestor has a special right of access to some of the information being released in this instance. *See* Fam. Code § 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the city receives another request for the same information from a different requestor, the city must again seek a ruling from this office.