



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 15, 2020

Ms. Erin Ham  
Deputy City Clerk  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2020-13858

Dear Ms. Ham:

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# 829722 (City ID# 249).

The City of Wichita Falls (the "city") received a request for all police reports, CAD calls, and 9-1-1 calls regarding a named individual during a specified time period. 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 city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city 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 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.

Next, we note report number 19-07015 contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the city may not withhold the court-filed document in report number 19-07015, which we marked, under section 552.108. However, we note a portion of the court-filed document may be subject to section 552.1175, which makes information confidential under the Act.<sup>1</sup> Therefore, we will address the applicability of section 552.1175 to the information subject to section 552.022(a)(17). Further, we will address your arguments against disclosure of the remaining information not subject to section 552.022.

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. This section encompasses information made confidential by other statutes, such as section 261.201(a) 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:

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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 will ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). You state report number 19-020480 was used in an investigation of alleged child abuse or neglect under chapter 261 of the Family Code. *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 do not indicate the city has adopted any rules that would permit the release of the responsive information. Accordingly, we find report number 19-020480 is subject to chapter 261 of the Family Code. Therefore, we conclude report number 19-020480 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 19-071015, 19-100986, and 19-111011 relate to ongoing criminal investigations, and release of that information would interfere with the investigation and prosecution of the cases. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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). Thus, section 552.108(a)(1) is applicable to report numbers 19-071015, 19-100986, 19-111011, and 20-030049.

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 number 18-040410 pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on

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

this representation, we agree section 552.108(a)(2) is applicable to report number 18-040410.

However, we note, and you acknowledge, 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 information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the information subject to section 552.022(a)(17) and basic information, the city may withhold report numbers 19-071015, 19-100986, 19-111011, and 20-030049 under section 552.108(a)(1) of the Government Code and report number 18-040410 under 552.108(a)(2) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

...

(2) county jailers as defined by Section 1701.001, Occupations Code[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Gov’t Code § 552.1175(a)(2), (b). To the extent the named individual, a detention officer, is a county jailer as defined by section 1701.001 of the Occupations Code, section 552.1175 applies to her. Accordingly, to the extent section 552.1175 applies to the detention officer, if the detention officer elects to restrict access to her information in accordance with section 552.1175(b), then the city must withhold the information we marked under section 552.1175. If section 552.1175 does not apply to the detention officer or if no election is made, the city must release the information we marked under section 552.1175.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold report number 19-020480 under section

552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which you state has been released, and the information subject 552.022(a)(17) of the Government Code, which must be released, the city may withhold report numbers 19-071015, 19-100986, and 19-111011 under section 552.108(a)(1) of the Government Code and report number 18-040410 under section 552.108(a)(2) of the Government Code. In releasing the information subject to section 552.022(a)(17) of the Government Code, to the extent section 552.1175 of the Government Code applies to the detention officer and the detention officer elects to restrict access to her information in accordance with section 552.1175(b) of the Government Code, then the city must withhold the information we marked under section 552.1175 of the Government 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 <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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/jlbm

Ref: ID# 829722

Enc. Submitted documents

c: Requestor  
(w/o enclosures)