



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2020

Mr. L. Brian Narvaez
Counsel for The City of McKinney
Brown & Hofmeister, L. L. P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2020-16522

Dear Mr. Narvaez:

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# 833542 (ORR No. P014581).

The City of McKinney (the "city"), which you represent, received a request for information pertaining to certain named individuals during a specified time period, including a specified incident. You state the city will release some information. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 city asserts the present request requires the city to compile unspecified law enforcement records concerning the other named individuals. We find the portion of the request seeking records pertaining to the other named individuals generally implicates the named individuals' right to privacy. We note, however, the requestor also seeks reports involving herself. This aspect of the request seeks specified records involving the requestor, and the requestor has a right of access to private information pertaining to herself pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, information relating to the requestor does not implicate the other named individuals' right to privacy. The city has submitted law enforcement records that involve the requestor, which you marked as Exhibit B. This information does not consist of a compilation of the other named individuals' criminal histories, and the city may not withhold Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. However, to the extent the city maintains law enforcement records depicting the other named individuals as a suspect, arrestee, or criminal defendant and the records do not involve the requestor, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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). You claim Exhibit B is subject to chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). However, you have failed to demonstrate, and the documents do not reflect, this information was used or developed in an investigation of alleged or suspected child abuse or neglect or consists of a report of alleged or suspected abuse or neglect. Accordingly, we conclude this information is not within the scope of section 261.201. Therefore, the city may not withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, to the extent the city maintains law enforcement records depicting the other named individuals as a suspect, arrestee, or criminal defendant and the records do not involve the requestor, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release Exhibit B.

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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/rm

Ref: ID# 833542

Enc. Submitted documents

c: Requestor
(w/o enclosures)