



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2022

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

OR2022-04241

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# 929953 (Ref. No. P021117).

The City of McKinney (the "city"), which you represent, received a request for records involving seven named individuals and a specified address during a stated period of time. You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code and certain dates of birth pursuant to Open Records Letter No. 2018-07366 (2018).¹ You also state the city is releasing 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 present request for information because it does not consist of records pertaining to an incident that occurred during the time period specified in the present request. This ruling does not address the public availability of any information that is not responsive to the

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2018-07366 is a previous determination issued to the city authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

request and the city is not required to release such information in response to the present request.²

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 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 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. However, information that refers to a named 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 also note the requestor has a right of access to information pertaining to his minor child that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

The present request requires the city to compile unspecified law enforcement records concerning individuals named in the request. We find this request for unspecified law enforcement records implicates the named individuals’ right to privacy. Accordingly, with the exception of information pertaining to the requestor’s minor child, to the extent the city maintains unspecified law enforcement records depicting the remainder of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted responsive information in which none of the named individuals are depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of any of the individuals and may not be withheld as a compilation of criminal history. Thus, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other

² As we are able to make this determination, we need not address your argument against disclosure of this information.

statutes, such as section 261.201(a) of the Family Code, which provides, in part:

[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.

Fam. Code § 261.201(a). Upon review, we find the responsive information within Exhibit B may have been used or developed in an investigation of alleged or suspected 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). However, we are unable to determine the age of the victim in the information at issue. Accordingly, we must rule conditionally. To the extent the responsive information within Exhibit B involves a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the city must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Conversely, to the extent the information at issue does not involve a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the information is not confidential under section 261.201 of the Family Code and the city may not withhold it under section 552.101 of the Government Code on that basis.

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 information at issue 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 the information submitted as Exhibit D pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, 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 information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, the city may withhold Exhibit D under section 552.108(a)(2) of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find portions of the basic information, which you marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of information pertaining to the requestor's minor child, to the extent the city maintains unspecified law enforcement records depicting the remainder of the named individuals as a suspect, arrestee, or criminal defendant, the city must withhold any such responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the responsive information within Exhibit B involves a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the city must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, which must generally be released, the city may withhold Exhibit D under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining responsive information.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

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Enc. Submitted documents

c: Requestor
(w/o enclosures)