



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2022

Ms. Shawnta A. Adams
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2022-10060

Dear Ms. Adams:

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# 940678 (Police Dept. Ref. No. R128895).

The Arlington Police Department (the "department") received a request for all records involving a named individual, including records related to two specified incidents. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. A compilation of an individual's criminal history is highly

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 present request, in part, requires the department 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 department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, a portion of this request does not seek a compilation of an individual's criminal history; rather, the request is for information pertaining to specified incidents. Such a request does not implicate an individual's common-law right to privacy. Accordingly, the department may not withhold the information related to incident report numbers 910110586 and 910110914 as a criminal history compilation under section 552.101 in conjunction with common-law privacy. Accordingly, we will address your arguments against disclosure of this 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. This section encompasses information protected by other statutes, including section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise 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 id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that

occurred before, on, or after September 1, 2017.² *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Although you contend section 58.008 is applicable to the information at issue in this instance, we find the information at issue does not involve a suspect or offender who was at least ten years of age or older and under seventeen years of age at the time of the alleged offenses. We therefore conclude no portion of the information at issue is confidential under section 58.008 of the Family Code and may not be withheld on that basis under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides in part:

(a) [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.

Id. § 261.201(a). Upon review, we find the information related to incident report numbers 910110586 and 910110914 was used or developed in investigations of alleged or suspected child abuse by the department under 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); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code as 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). Accordingly, we find this information is subject to section 261.201 of the Family Code. As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the information related to incident report numbers 910110586 and 910110914 is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the requestor is an investigator with the Civil Division of the Special Prosecution Unit of the State of Texas and indicates his office is seeking the information at

² Although you raise section 552.101 of the Government Code in conjunction with section 58.007(j) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21, 2017 Tex. Sess. Law Serv. 3173, 3178. Thus, we understand you to raise section 58.008(b) of the Family Code.

issue pursuant to chapter 841 of the Health and Safety Code, which relates to the civil commitment of sexually violent predators. Section 841.142 of the Health and Safety Code provides in pertinent part:

(a) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under [chapter 841].

...

(e) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

Health & Safety Code § 841.142(a), (e). Upon notice and recommendation of the multi-disciplinary review team, the Texas Department of Criminal Justice shall assess whether an individual suffers from a behavioral abnormality making the individual likely to engage in a predatory act of sexual violence and provide notice of the assessment to the attorney representing the state in the county where the individual was convicted of the sexually violent offense. *See id.* §§ 841.023, .022(c), .002(1) (defining “attorney representing the state”). The attorney representing the state may file a petition alleging the individual is a sexually violent predator. *See id.* § 841.041(a). Section 841.042 of the Health and Safety Code provides “the special prosecution unit shall provide legal, financial, and technical assistance to the attorney for a civil commitment proceeding conducted under [chapter 841].” *Id.* § 841.042. Thus, the civil division of the special prosecution unit is an entity charged with assisting the attorney representing the state in making an assessment or determination under chapter 841 of the Health and Safety Code. We understand an attorney representing the state in a proceeding being conducted under chapter 841 has requested the assistance from the special prosecution unit. The requestor indicates the special prosecution unit seeks the civil commitment of a sexually violent predator, and he states he is assigned to a case involving the named individual. Therefore, the requestor has a right of access to the information at issue pursuant to section 841.142.

Although the information related to incident report numbers 910110586 and 910110914 is confidential under section 261.201 of the Family Code, section 841.142 of the Health and Safety Code provides the requestor with a right of access to the submitted information, regardless of whether the information is otherwise confidential. We note section 841.142 was enacted after section 261.201. Act of May 31, 1999, 76th Leg., R.S., ch. 1188, § 4.01 (codified as Health & Safety Code § 841.142); Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1 (codified as Fam. Code § 261.201). When the legislature enacts a statute, it is presumed to do so “with complete knowledge of the existing law and with reference to it.” *Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 301 (Tex. 1990); *CenterPoint Energy*

Houston Elec., LLC v. Gulf Coast Coalition of Cities, 263 S.W.3d 448, 461 (Tex. App.—Austin 2008), *aff'd sub nom. Texas Indus. Energy Consumers v. CenterPoint Energy Houston Elec., LLC*, 342 S.W.3d 95 (Tex. 2009). We also note a statutory right of access prevails over the common law. *See Collins v. Tex. Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth, 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Thus, we conclude the information related to incident report numbers 910110586 and 910110914, along with any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, must be released to this requestor under section 841.142 of the Health & Safety Code.³

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jm

Ref: ID# 940678

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As noted, the requestor has a special right of access, beyond that of the general public, to any information being released in this instance. Therefore, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.