



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2022

Ms. Amy B. DeLong
Counsel for the City of Hewitt
Haley Olson
100 North Ritchie Road, Suite 200
Waco, Texas 76712

OR2022-12011

Dear Ms. DeLong:

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# 943471.

The City of Hewitt (the "city"), which you represent, received a request for all police reports involving the requestor and four named individuals, including the requestor's minor children. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 embarrassing information, the publication of which would be highly objectionable to a

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.

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). Moreover, 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 an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis. We further note the requestor has a special right of access to her own information and her minor children's information that would ordinarily be withheld to protect their privacy interests. *See Gov't Code § 552.023(a)* (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 themselves).

Upon review, we find the requestor, in part, seeks police reports involving herself and her minor children. This part of the request seeks specified records involving the requestor and her minor children and does not implicate the other named individuals' rights to privacy. Therefore, information relating to the requestor and her minor children may not be withheld from her as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. In addition, we note you have submitted information that does not list the other named individuals as suspects, arrestees, or criminal defendants. This information does not consist of a compilation of the other named individuals' criminal histories, and the city may not withhold it under section 552.101 in conjunction with common-law privacy on that basis. Accordingly, we will consider your remaining arguments against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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.

...

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). You argue some of the submitted information is subject to chapter 261 of the Family Code. Upon review, we find Exhibit C, Exhibit D, and incident report number 18000723 were used in investigations of alleged or suspected child abuse or neglect by the city's police department. Accordingly, this information falls within the scope of section 261.201 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). In this instance, the requestor is a parent of the child victims listed in some of the information at issue. However, we note the requestor is alleged to have committed the suspected abuse or neglect in some of the reports at issue. Thus, the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Therefore, with the exception of incident report numbers 18000446 and 21000555, the city must withhold Exhibit C, Exhibit D, and incident report number 18000723 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We note, however, the requestor is a parent of the child victims listed in incident report numbers 18000446 and 21000555 and is not alleged to have committed the suspected abuse or neglect in those reports. Thus, pursuant to section 261.201(k),

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

incident report numbers 18000446 and 21000555 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See* Fam Code. § 261.201(k). However, section 261.201(1)(1) states any personally identifiable information about a victim or witness who is under 18 years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(1)(1). Accordingly, we find the city must withhold the personally identifiable information about victims or witnesses who are under 18 years of age and are not the child of the requestor in incident report number 21000555, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. Further, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider whether this information is otherwise excepted from disclosure.

Section 552.108(a)(1) 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 ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report numbers 19000572, 22000114, and 22000077 relate to pending criminal investigations or prosecution. Based on this representation and our review, we conclude release of the information at issue will interfere with the detection, investigation, or prosecution of crimes. *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). Accordingly, we find section 552.108(a)(1) of the Government Code is applicable to incident report numbers 19000572, 22000114, and 22000077.

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. *See* 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report number 18000446 relates to a closed 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 incident report number 18000446.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold incident report numbers 19000572, 22000114, and 22000077 under section 552.108(a)(1)

of the Government Code and may withhold incident report number 18000446 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. *See 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 Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). As noted above, the requestor has a right of access to information pertaining to herself and her minor children under section 552.023 of the Government Code and it may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See Gov't Code* § 552.023(a); ORD 481 at 4. Thus, with the exception of the dates of birth belonging to the requestor and her minor children, the city must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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.³ *See Gov't Code* § 552.130. Because section 552.130 protects personal privacy, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city must withhold the motor vehicle record information we have marked and the visible license plates and registration stickers in the remaining information under section 552.130 of the Government Code.

In summary, with the exception of incident report numbers 18000446 and 21000555, the city must withhold Exhibit C, Exhibit D, and incident report number 18000723 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. With the exception of the basic information, which must be released, the city may withhold incident report numbers 19000572, 22000114, and 22000077 under section 552.108(a)(1) of the Government Code and may withhold incident report number 18000446 under section 552.108(a)(2) of the Government Code. With the exception of the dates of birth belonging to the requestor and her minor children, the city must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have marked and the visible license plates and

³ 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).*

registration stickers in the remaining information under section 552.130 of the Government Code. The city must release the remaining information to this requestor.⁴

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/mo

Ref: ID# 943471

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ We note the requestor has a right of access to some of the information being released in this instance. *See* Fam. Code §§ 58.008(d)(4), 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. We note the information being released contains social security numbers. 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). However, the requestor has a right of access to her own social security number and her minor children's social security numbers, and they must be released to her. *See id.* § 552.023(a); ORD 481 at 4.