



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2022

Ms. Stephanie Berry
Assistant City Attorney
City of Denton
215 East McKinney Street
Denton, Texas 76201-4299

OR2022-18889

Dear Ms. Berry:

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# 956311 (Ref. No. C000476-040722).

The City of Denton (the "city") received a request for all records involving certain named individuals during a specified time period. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 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. This section 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 individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. However, we note the requestor may be one of the named individuals, in which case the requestor would have a special right of access to the otherwise private information of this individual pursuant to section 552.023 of the Government Code. *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 herself). Because we are unable to determine whether the requestor is the individual at issue, we must rule conditionally. Accordingly, if the requestor is not a named individual at issue in the present request, then, to the extent the city maintains law enforcement records depicting any of the named individuals 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. If, however, the requestor is the named individual at issue, then the city may not withhold information involving this named individual under section 552.101 in conjunction with common-law privacy as a compilation of criminal history. In that case, to the extent the city maintains law enforcement records not involving this named individual, but depicting any of the remaining named individuals 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.

Additionally, 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 none of the named individuals are depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individuals and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 261.201, 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:

- (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 . . . 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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find Exhibits D, E, F, and G were used or developed in investigations of alleged or suspected child abuse or neglect conducted by the city's police department (the "department") under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *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 department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold Exhibits D and E under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Furthermore, to the extent the requestor is not one of the named individuals at issue, the city must withhold Exhibits F and G under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² To the extent the requestor is one of the named individuals at issue, the requestor is one of the child victims at issue and is now an adult. Therefore, to the extent the requestor is one of the named individuals at issue the city may not withhold Exhibits F and G from this requestor on the basis of section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(k). Further, section 261.201(l)(2), states any information that is excepted from required disclosure under the

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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

Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we will consider whether the information at issue may be otherwise excepted from disclosure.

As stated 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. This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy. In this instance, to the extent the requestor is one of the named individuals at issue, the requestor knows the identity of the alleged victim in Exhibit F. We believe, in this instance, withholding only the individual's identity from the requestor would not preserve the individual's common-law right of privacy. Accordingly, to the extent the requestor is one of the named individuals at issue, the city must withhold Exhibit F in its entirety from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* 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 conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You assert Exhibits C, G, and H relate to criminal investigations that concluded in a result other than conviction or deferred adjudication. Based upon your representation, we conclude 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." *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold Exhibits C, G, and H under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not a named individual at issue in the present request, then, to the extent the city maintains law enforcement records depicting any of the named individuals 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. If the requestor is the named individual at issue, then, to the extent the city maintains law enforcement records not involving this named individual, but

depicting any of the remaining named individuals 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 Exhibits D and E under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the requestor is not one of the named individuals at issue, the city must withhold Exhibits F and G under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the requestor is one of the named individuals at issue, the city must withhold Exhibit F in its entirety from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy and, with the exception of basic information, which must be released to this requestor, the city may withhold Exhibit G under section 552.108(a)(2) of the Government Code. In any case, with the exception of basic information, which must be released to this requestor, the city may withhold Exhibits C and H under section 552.108(a)(2) 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 956311

Enc. Submitted documents

c: Requestor
(w/o enclosures)