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ATTORNEY GENERAL OF TEXAS

August 15, 2022

Ms. Amy B. DeLong
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100 North Ritchie Road, Suite 200
Waco, Texas 76712

OR2022-24212

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# 965858.

The City of Robinson (the "city"), which you represent, received a request from two requestors for records involving two named individuals during two specified time periods and records involving two named individuals on a specified date. 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 public 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 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 private 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. We note the requestors have a right of access to information pertaining to themselves and their minor children that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) (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 themselves).

You claim the present request requires the city to compile unspecified law enforcement records concerning the named individuals at issue. We note, however, you have submitted information in which the named individuals other than the requestors or their minor children are not listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and, thus, does not implicate these individuals' right to privacy. Additionally, we note the remaining information pertains to an incident specified by the requestors. Because the requestors specifically ask for this information, it is not part of a compilation of any individuals' criminal histories. Thus, the submitted information is not confidential under common-law privacy as a compilation of criminal history, and the city may not withhold it under section 552.101 of the Government Code on that ground. Accordingly, we will consider your remaining arguments for the submitted information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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 agree some of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find the information related to incident report numbers 21RPD07941, 21RPD10761, 21RPD15620, and 22RPD04630 is subject to section 261.201 of the Family Code. However, we note the requestors are parents or guardians of the child victim listed in incident report numbers 21RPD10761 and 21RPD15620. Further, the requestors are not alleged to have committed the abuse or neglect. Thus, pursuant to section 261.201(k), the information related to incident report numbers 21RPD10761 and 21RPD15620 may not be withheld from these requestors under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Therefore, we will consider your remaining arguments against disclosure of this information. We note the requestors may be parents, guardians, or managing conservators of the child victims listed in the information related to incident report number 22RPD04630. However, the requestors are accused of committing the alleged abuse or neglect in incident report number 22RPD04630. Thus, the requestors do not have a right of access to the information related to incident report number 22RPD04630 under section 261.201(k). *Id.* § 261.201(k). Accordingly, the city must withhold the information related to incident report number 22RPD04630 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

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

We further note the requestors may be parents, guardians, or managing conservators of the child victim listed in incident report number 21RPD07941. Further, the requestors are not alleged to have committed the suspected abuse or neglect in incident report number 21RPD07941. As such, the requestors may have a right of access to the information related to incident report number 21RPD07941 pursuant to section 261.201(k). Accordingly, to the extent the requestors are not parents, guardians, or managing conservators of the child victim at issue, then the city must withhold the information related to incident report number 21RPD07941 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, if requestors are parents, guardians, or managing conservators of the child victim at issue, then pursuant to section 261.201(k), the city may not withhold the information related to incident report number 21RPD07941 from these requestors. Fam. Code § 261.201(k). However, as noted above, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Therefore, we will consider your remaining arguments against disclosure of this information. Furthermore, we find we find you have failed to demonstrate any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Additionally, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4). Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses 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.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

...

(4) the child's parent or guardian[.]

...

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

...

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

Id. § 58.008(b), (d)(4), (e)(2); *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 The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find the information related to incident report numbers 21RPD07941, 21RPD10761, 21RPD13996, 21RPD15620, and 21RPD21635 involve a juvenile offender, so as to fall within the scope of section 58.008(b). In this instance, however, the requestors are parents or guardians of the juvenile offender at issue. Thus, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). Accordingly, the city may not withhold the information related to incident report numbers 21RPD07941, 21RPD10761, 21RPD13996, 21RPD15620, and 21RPD21635 from these requestors under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, section 58.008(e)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.008(e)(2). Thus, we will consider your argument under section 552.108 of the Government Code against release of this information. Furthermore, we find you have failed to demonstrate the applicability of section 58.008(b) to the remaining information at issue. Therefore, the city may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

² Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) 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.

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 the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate the remaining information pertains to pending criminal investigations or prosecutions. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, we note 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). 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). We note basic information does not include the identifying information of the victim, unless the victim is also the complainant. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the city may withhold the remaining information, including the information related to incident report number 21RPD07941 to the extent the requestors are parents, guardians, or managing conservators of the child victim at issue, under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the information related to incident report number 22RPD04630 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the requestors are not parents, guardians, or managing conservators of the child victim at issue, then the city must withhold the information related to incident report number 21RPD07941 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the requestors are parents, guardians, or managing conservators of the child victim at issue, then, with the exception of basic information, which must be released to these requestors, the city may withhold the information related to incident report number 21RPD07941 under section 552.108(a)(1) of the Government Code. With the exception of basic information, which must be released to these requestors, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. The city must release the remaining information to these requestors.³

³ We note the requestors have a right of access to some of the information being released. *See* Fam. Code §§ 58.008(d), 261.201(k); Gov’t Code § 552.023(a); ORD 481. If the city receives another request for this information from a different requestor, the city must again seek a ruling from this office. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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/jxd

Ref: ID# 965858

Enc. Submitted documents

c: Requestor
(w/o enclosures)