



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2006

Mr. Warren Spencer  
Legal Advisor  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2006-05111

Dear Mr. Spencer:

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# 249355.

The Plano Police Department (the "department") received a request for information related to two named individuals and a specified address "for the past year[.]" You indicate that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

We note, however, that the Department of Public Safety (the "DPS") is required to provide criminal history information ("CHRI") to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded that a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. Open Records Decision No. 655 at 4 (1997). The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides that "the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). The requestor is with the Plano Housing Authority (the "housing authority") and seeks CHRI regarding tenants of public housing. The housing authority is therefore authorized to receive CHRI from the DPS. Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). Accordingly, the housing authority is also authorized to receive CHRI from a local criminal justice agency, such as the department. *See* Open Records Decision No. 655 (1997); *see also* Gov't Code §§ 411.083(b)(2), 411.087(a). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2).

Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). In this instance, we cannot determine if the requestor is seeking the release of CHRI of the adult tenants for purposes of lease enforcement or eviction. Consequently, to the extent the department maintains law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant and the department determines that the requestor intends to use the CHRI for purposes of lease enforcement or eviction, we conclude that the department must release information to this requestor that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions, and must withhold the remainder of the records at issue from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records

Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). However, if the department determines that the housing authority does not intend to use the CHRI for purposes of lease enforcement or eviction, the department must withhold law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The 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, 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). Because a portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. *See id.* You do not state that the department has adopted a rule that governs the release of this type of information. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We note that chapter 411 of the Government Code constitutes “applicable state law” in this instance.

We cannot determine whether the housing authority intends to use the CHRI found in Exhibit D for purposes consistent with the Family Code. Consequently, if the department determines that the housing authority intends to use the CHRI in Exhibit D for purposes consistent with the Family Code, we conclude that the department must make available to the housing authority the information from Exhibit D that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the department must withhold the remainder of the information in Exhibit D from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, if the department determines that the housing authority does not intend to use the CHRI for purposes consistent with the Family Code, the department must withhold Exhibit D from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure), 440 at 2 (1986) (construing predecessor statute); Fam. Code §§ 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

Finally, we note that section 552.130 of the Government Code is applicable to some of the submitted information. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we have marked the information in Exhibit F that the department must withhold pursuant to section 552.130.

To summarize: (1) To the extent the department maintains law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant, we conclude as follows: If the department determines that the housing authority intends to use the CHRI for purposes of lease enforcement or eviction, the department must make available to the housing authority the information from the documents at issue that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and must withhold the remainder of the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines that the housing authority does not intend to use the CHRI for purposes of lease enforcement or eviction, the department must withhold law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy. (2) If the department determines that the housing authority intends to use the CHRI in Exhibit D for purposes consistent with the Family Code, the department must make available to the housing authority the information from Exhibit D that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and must withhold the remainder of the information in Exhibit D from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines that the housing authority does not intend to use the CHRI in Exhibit D for purposes consistent with the Family Code, the department must withhold the entirety of Exhibit D from disclosure under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. (3) We have marked the

information in Exhibit F that the department must withhold pursuant to section 552.130 of the Government Code. (4) The remaining information must be released to the requestor.<sup>1</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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<sup>1</sup>We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/eb

Ref: ID# 249355

Enc. Submitted documents

c: Ms. Joann Rios  
Plano Housing Authority  
111 Avenue H, Building A, Suite 200  
Plano, Texas 75074  
(w/o enclosures)