



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 11, 2008

Ms. Cathie Childs  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767-1088

OR2008-07978

Dear Ms. Childs:

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# 312717.

The Austin Police Department (the "department") received a request for certified copies of all felony and misdemeanor convictions and incident reports pertaining to three named individuals. You claim that 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.<sup>1</sup>

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You inform us, and provide documentation showing, that the department received the instant request for information on March 18, 2008. Accordingly, you were required to submit a request for a ruling from this office by April 1, 2008. Although the department attempted to mail the request for a ruling on

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<sup>1</sup>We assume that 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.

April 1, 2008, the United States Postal Service returned the department's letter for lack of postage. *See id.* § 552.308 (request is timely if sent by first class United States mail properly addressed with postage or handling charges prepaid and bears post office cancellation mark or receipt mark of carrier indicating time within that period). Thus, you did not effectively mail the department's request for a ruling to this office until April 7, 2008. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your argument under this section.

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 demonstrated. *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. In this instance, the requestor asks for all information concerning three named individuals. Thus, these individuals' privacy rights have been implicated, and any records pertaining to the named individuals as possible suspects, arrestees, or criminal defendants are generally required to be withheld under section 552.101 in conjunction with common-law privacy. *See id.*

We note, however, that the requestor in this instance is with the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code states in pertinent part:

(a)(2) The Department of Family and Protective Services shall obtain from the [Department of Public Safety ("DPS")] criminal history record information ["CHRI"] maintained by the [DPS] that relates to a person who is:

...

(I) a person who is the subject of a report the Department of Family and Protective Services receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the statutory definition of abuse, neglect, or exploitation under Chapter 261, Family Code or Chapter 48, Human Resources Code; and

(ii) the person who is the subject of the report is not also the victim of the alleged conduct[.]

(4) Subject to Section 411.087, the [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). 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." *See generally id.* § 411.082(2). In this case, the DFPS investigator does not state that any of the named individuals are the subject of a report of abuse or neglect of a child, but requests information about the three named individuals for purposes relating to a specified case. For two of the named individuals, which we have noted, we are unable to conclude that section 411.114 of the Government Code grants the requestor a right of access to any of the requested information, and we must rule conditionally. *See id.* § 411.114. Therefore, if either of the two named individuals at issue is the subject of a report of abuse or neglect of a child, then the department must release the CHRI as defined by section 411.082(2) from the requested documents pertaining to these named individuals as

possible suspects, arrestees, or criminal defendants. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). The remaining information must be withheld under section 552.101 in conjunction with common-law privacy. However, if the two individuals at issue are not the subject of a report of abuse or neglect of a child, then the department must withhold the information pertaining to these two individuals that depicts these individuals as possible suspects, arrestees, or criminal defendants under section 552.101 in conjunction with common-law privacy.

The remaining two submitted reports involve the third individual, one of which alleges abuse of a child. We note that the third individual is listed as a suspect in the child abuse report. Therefore, pursuant to section 411.114 of the Government Code, the department must release from the report we marked 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). The remaining information in the report must be withheld under section 552.101 in conjunction with common-law privacy because this person is listed as an offender. As for the child abuse report, it is governed by section 261.201 of the Family Code.

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

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 [the Family 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). Upon review, we find that the report we have marked was used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021). Thus, this information is generally confidential under section 261.201 of the Family Code. 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).

Chapter 411 of the Government Code constitutes "applicable state law" in this instance. As stated above, section 411.114 of the Government Code allows, among other things, DFPS to obtain from a criminal justice agency CHRI concerning individuals who are the subjects of a report of abuse or neglect of a child. Gov't Code § 411.114(a)(2), (a)(4). Thus, the requestor in this instance is authorized to obtain CHRI from the department if disclosure of the information is for purposes consistent with the Family Code. *Id.*; see also Fam. Code § 261.201(a). Consequently, if the department determines that the requestor intends to use the CHRI for purposes consistent with the Family Code, then the department must release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If the department determines that the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the department must withhold the entire report we have marked pursuant to section 552.101 in conjunction with section 261.201.

In summary, if either of the two named individuals we have noted is the subject of a report of abuse or neglect of a child, then the department must release the CHRI from the documents showing the named individuals as possible suspects, arrestees, or criminal defendants, and the remainder of the reports must be withheld under section 552.101 in conjunction with common-law privacy. However, if these two individuals are not the subject of a report of abuse or neglect of a child, then the department must withhold these reports in their entirety under section 552.101 in conjunction with common-law privacy. For the remaining individual, the department must release the CHRI from the report we marked and withhold the rest of the report under common-law privacy. For the child abuse report that is confidential under section 261.201 of the Family Code, if the department determines that the requestor intends to use the CHRI for purposes consistent with the Family Code, then the department must release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines that the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the department must withhold the entire report we have marked pursuant to section 552.101 in conjunction with section 261.201 of the Family Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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.

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 312717

Enc. Submitted documents

c: Ms. Amanda Martinez  
Texas Department of Family and Protective Services  
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San Antonio, Texas 78223  
(w/o enclosures)