



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2009

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-09060

Dear Ms. Webster:

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# 347506 (LGL-09-366).

The Waco Police Department (the "department") received a request for information regarding a named individual and a specified address. You state you will release some of the responsive information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We also understand you to claim sections 552.101 and 552.147 of the Government Code for portions of the submitted information. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the present request for reports pertaining to the named individual implicates this individual's common-law right to privacy. 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. 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 that 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 is not private and may not be withheld under section 552.101 on that basis.

The present request, in part, seeks all information involving a named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records, other than the specifically requested incident report, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 Waco Housing Authority (the "housing authority") and seeks the CHRI of a named individual. The housing authority is authorized to receive CHRI from the DPS, and 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 an adult tenant for purposes of applicant screening, lease enforcement, or eviction. Consequently, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the department determines that the requestor intends to use the CHRI for purposes of applicant screening, 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, information, indictments, detentions, convictions, or other formal charges and their dispositions; to the extent they exist, the department 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 applicant screening, lease enforcement, or eviction, then to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that you have submitted reports where the named individual is not listed as a possible suspect, arrestee, or defendant. Thus, we will address your arguments for exception of this information.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which 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 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.

Fam. Code § 261.201(a). We note some of the submitted information was used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 261.001 (defining “abuse” and “neglect” for the purposes of chapter 261 of the Family Code), 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). Therefore, this information is within the scope of section 261.201. You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. 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).

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the reports you have marked pertain to pending criminal cases. Based upon your representations, we conclude that the release of this information 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, and you acknowledge, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *See* Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state will be released, the department may generally withhold the reports you have marked under section 552.108(a)(1) of the Government Code.

However, as we noted above, the requestor is a housing authority and we cannot determine if the requestor is seeking the release of CHRI of applicants or tenants for purposes of applicant screening, lease enforcement, or eviction. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law.” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 261.201 of the Family Code and section 552.108 of the Government Code. *Cf. Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state

law). Thus, if the reports marked under section 261.201 of the Family Code and section 552.108(a)(1) of the Government Code relate to applicants or tenants of the housing authority and the department determines that the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, any CHRI of adult tenants of public housing that is contained within those reports must be released to this requestor in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655. *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records). The remaining information contained in the reports we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code must be withheld, and with the exception of the basic information and the CHRI, the department may withhold the remaining information in the reports you have marked under section 552.108(a)(1) of the Government Code. However, if the department determines that the reports marked under section 261.201 of the Family Code and section 552.108(a)(1) of the Government Code do not relate to housing authority applicants or tenants or that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then the department must withhold the reports we have marked under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code, and the department may withhold the CHRI along with the remaining non-basic information under section 552.108 of the Government Code.

We note that you have marked telephone numbers obtained from 9-1-1 callers in the remaining information. Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand you to assert that the city's emergency communication district is subject to section 772.318. Therefore, to the extent the originating telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier, the telephone numbers you have marked within the remaining CAD records are confidential under section 772.318 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code. To the extent the telephone numbers you have marked in the remaining information were not provided by a 9-1-1 service supplier to the emergency communication district, this information may not be withheld under section 552.101 in conjunction with section 772.318.

Next, you claim that portions of the remaining information are excepted from disclosure under section 552.130, which excepts from disclosure "information [that] relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] (2) a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle and driver's license information we have marked under section 552.130 of the Government Code.

Finally, section 552.147 of the Government Code states that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.¹ *Id.* § 552.147. We agree that the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and the department determines that the requestor intends to use the CHRI for purposes of applicant screening, 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; the department 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. However, if the department determines that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement or eviction, the department must withhold law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy. Next, if the department determines that the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, any CHRI of the tenants that is contained within the reports we have marked under section 261.201 of the Family Code and the reports you have marked under section 552.108(a)(1) of the Government Code must be released to this requestor in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655; the remaining information in the reports we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code must be withheld, and with the exception of the basic information and the CHRI, the department may withhold the remaining information in the reports you have marked under section 552.108(a)(1) of the Government Code. If the department determines that the reports marked under section 261.201 of the Family Code and section 552.108(a)(1) of the Government Code do not relate to housing authority applicants or tenants or that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then the department must withhold the reports we have marked under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code, and with the exception of the basic information, the department may withhold the reports you have marked under section 552.108(a)(1) of the Government Code. To the extent the originating telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier, the telephone numbers you have marked within the submitted CAD records are confidential under section 772.318 of the Health and Safety Code and must be withheld from disclosure

¹We note that 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 under the Act.

under section 552.101 of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. Lastly, the department may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#347506

Enc. Submitted documents

c: Requestor
(w/o enclosures)