



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 6, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-00226

Dear Ms. Sandoval-Walker:

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# 366746.

The El Paso Police Department (the "department") received two requests from the same requestor for all incident reports involving three named individuals. You state you have released some of the requested information to the requestor. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, 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

¹Although you also cite to section 552.108 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, we assume you no longer assert this section. See Gov't Code §§ 552.301, .302.

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). A portion of the submitted information was used or developed in an investigation of alleged child abandonment or endangerment. *See* Fam. Code § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also 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). Thus, we find the report we have marked 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. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person.” *See* Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

- (2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). We note that “criminal history record information” is defined as “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 id.* § 411.082(2). Thus, in this

instance, the marked report contains "criminal history record information." However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor in this instance is a representative of a "criminal justice agency," it is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2).

A "criminal justice agency" is defined in part as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." *Id.* § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information." Code Crim. Proc. art. 60.01(1).

In this case, the requestor is an employee of the New Mexico Children, Youth, and Families Department. We cannot determine whether she is a representative of a criminal justice agency or whether she intends to use the criminal history record information for a criminal justice purpose or for purposes consistent with the Family Code. Consequently, if the department determines the requestor is a representative of a criminal justice agency for purposes of chapter 411 and she intends to use the criminal history record information for a criminal justice purpose and purposes consistent with the Family Code, then the department must make available to the requestor the criminal history record information from the marked report 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 at issue 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 is either not a criminal justice agency for purposes of 411 or that she does not seek this information for a criminal justice purpose and for purposes consistent with the Family Code, then the department must withhold the marked report in its entirety pursuant to section 552.101 in conjunction with section 261.201. *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).

You claim one of the requests requires the department to compile unspecified law enforcement records concerning one of the named individuals. Section 552.101 of the Government Code also 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. *See 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 established. *See 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 privacy 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, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

We agree of the request at issue requires the department to compile unspecified police records concerning one of the named individuals. Therefore, to the extent the department maintains law enforcement records depicting this 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.

However, as noted above, the requestor is an employee of the New Mexico Children, Youth, and Families Department. In this instance, we cannot determine whether she is a representative of a criminal justice agency or whether she intends to use the criminal history record information for a criminal justice purpose. Consequently, if the department determines that the requestor is a representative of a criminal justice agency for purposes of chapter 411 and she intends to use the criminal history record information for a criminal justice purpose, then to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must make available to the requestor the criminal history record information pertaining to this individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The department must withhold any remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor is either not a criminal justice agency for purposes of 411 or that she does not seek this information for a criminal justice purpose, then, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

In summary, with regard to the marked report, if the department determines the requestor is a representative of a criminal justice agency for purposes of chapter 411 and she intends to

use the criminal history record information for a criminal justice purpose and purposes consistent with the Family Code, then the department must make available to the requestor the criminal history record information from the marked report, but must withhold the remaining information at issue 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 is either not a criminal justice agency for purposes of 411 or that she does not seek this information for a criminal justice purpose and for purposes consistent with the Family Code, then the department must withhold the marked report in its entirety pursuant to section 552.101 in conjunction with section 261.201. As to the remaining requested information, if the department determines the requestor is a representative of a criminal justice agency for purposes of chapter 411 and she intends to use the criminal history record information for a criminal justice purpose, then to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must make available to the requestor the criminal history record information pertaining to this individual, but must withhold any remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor is either not a criminal justice agency for purposes of 411 or that she does not seek this information for a criminal justice purpose, then, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 366746

Enc. Submitted documents

cc: Requestor
(w/o enclosures)