



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2010

Mr. Jason Day
City Attorney
City of Royse City
P. O. Box 638
Royse City, Texas 75189

OR2010-04570

Dear Mr. Day:

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# 374295(RCCA10-0009).

The Royse City Police Department (the "department") received a request for police records pertaining to a specified individual. You claim the 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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. 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor is a recruiter for the United States Army (the "Army") requesting all criminal records concerning a named individual, who we understand to be a potential enlistee. Generally a request for an individual's criminal history implicates that individual's right to privacy. However, the requestor has submitted a signed written consent from this individual for the release of the requested information. Thus, the requestor is the authorized representative of this individual, and, as such, has a special right of access to this individual's private information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Therefore, incident report numbers 0302C0050 and 09-12-0021 may not be withheld under section 552.101 of the Government Code on that basis.

You assert, however, that incident report number 09-12-0021 is confidential under section 261.201 of the Family Code. Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides 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.

Fam. Code § 261.201(a). You state incident report number 09-12-0021 pertains to an investigation by Child Protective Services of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). You state the department has not adopted a rule governing the release of this information. Therefore, report number 09-12-0021 is generally confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

As noted above, however, the requestor is a recruiter for the Army and the named individual is a potential enlistee. The United States Department of Defense (the "DoD") is authorized

to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into the armed services. 5 U.S.C. § 9101(b)(1)(C); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Army has a right to the criminal history record information (“CHRI”) of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(6) (DoD includes the Department of the Army). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

Federal law provides the Army’s right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law... of any State”). We conclude the Army’s right of access under federal law preempts the state confidentiality provision you claim. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Army’s right of access is contingent on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c). In this case, the Army has provided signed, written consent from the individual at issue. Accordingly, to the extent the department determines incident report number 09-12-0021 contains CHRI, the department must release that information to the requestor in accordance with federal law. The remaining information in incident report number 09-12-0021 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Finally, section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency. Gov’t Code § 552.130(a)(1), (2). Incident report number 0302C0050 contains Texas driver’s license numbers of other individuals. Therefore, the Texas driver’s license numbers we marked in incident report number 0302C0050 must be withheld under section 552.130.¹

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, to the extent the department determines incident report number 09-12-0021 contains CHRI, the department must release that information to the requestor in accordance with federal law. The remaining information in incident report number 09-12-0021 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the driver's license numbers we marked under section 552.130, the department must release incident report number 0302C0050.²

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 374295

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the remaining information contains the social security number of the potential enlistee. Section 552.147 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. *See* Gov't Code § 552.147. However, the requestor in this instance is the authorized representative of the potential enlistee and has a right of access to this information. *See id.* § 552.023(b). Therefore the social security number must be released to this requestor.