ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2010

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-05401

Dear Mr. Weir:

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# 376204 (COSA File No. 2010-5006).

The San Antonio Police Department (the "department") received a request for information pertaining to a named individual. 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 information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You inform us that the department received the request for information on January 20, 2010. The tenth business day was February 2, 2010. However, your request for a ruling from this office is postmarked February 9, 2010. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find you have failed to comply with the 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; the governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires you to withhold 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 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. *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.

The present request requires the department to compile unspecified police records concerning the named individual. Therefore, to the extent that the department maintains law enforcement records 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. In this instance, however, we believe that the requestor may have a right of access to part of the information at issue.

The requestor in this instance is an investigator 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). For purposes of section 411.114, 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* Gov't Code § 411.082(2). In this case, the requestor does not specifically state the named individual is a suspect of a DFPS report of abuse or neglect of a child. The DFPS states the individual is a principal in an open CPS case. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the requested information, and we must rule conditionally. *See* Gov't Code § 411.114; *see also* Gov't Code § 411.082(2). Therefore, if the named individual is the suspect in a DFPS report of abuse or neglect of a child, the department must release the CHRI, as defined by section 411.082(2), about that individual and withhold the remaining information on privacy grounds to the extent it depicts the named individual as a suspect, arrestee, or criminal defendant. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Otherwise, the CHRI is not subject to release to this requestor under section 411.114 and to the extent the information depicts the named individual as a possible suspect, arrestee, or criminal defendant, it is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with the common-law right to privacy. *Cf. Reporters Comm.*, 489 U.S. 749.

We note you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. This information does not constitute a compilation of the named individual's criminal history and it may not be withheld on this basis. As you raise no further exceptions to disclosure of this information, it must be released.

In summary, to the extent that the department maintains law enforcement records 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. However, if the named individual is the suspect in a DFPS report of abuse or neglect of a child, the department must release the CHRI, as defined by section 411.082(2) of the Government Code, about that individual and withhold the remaining information on privacy grounds to the extent it depicts the named individual as a suspect, arrestee, or criminal defendant. 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, toll free, at (888) 672-6787.

Sincerely,

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 376204

Enc. Submitted documents

cc: Requestor
(w/o enclosures)