



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2010

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2010-16107

Dear Ms. DeLuca:

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# 397789.

The Bryan Police Department (the "department") received a request for information pertaining to two named individuals at a specified address during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 section 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), *cert. denied*, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request seeks all reports pertaining to two named individuals. This request requires the department to compile the named individuals' criminal histories and thus implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the department must generally withhold such information under section 552.101 in conjunction with common-law privacy.

We note, however, the requestor is an employee of the Child Protective Services Division of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code states in pertinent part:

(a)(2) The [DFPS] 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 [DFPS] 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)[.]

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 either of the named individuals is the subject of a report of abuse or neglect of a child, but only requests information about the two named individuals during a specified time period. However, one of the named individuals is the suspect of child abuse that was reported to DFPS in two of the submitted reports. Therefore, pursuant to section 411.114 of the Government Code, the department must release the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from the requested information not pertaining to child abuse that depicts this individual as a suspect, arrestee, or criminal defendant, to the extent such information exists. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.— Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5<sup>th</sup> Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). To the extent it exists, any remaining information at issue must be withheld under section 552.101 in conjunction with common-law privacy. We note, however, the child abuse reports are governed by section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses information made confidential by statute, such as section 261.201(a) of the Family Code. Section 261.201(a) provides, in pertinent part:

(a) [T]he 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). Upon review, we find offense report numbers 10-0500597 and 10-0701276 were used or developed in investigations of alleged or suspected child abuse conducted by the department. *See id.* §§ 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *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, this information is generally confidential under section 261.201 of the Family Code. *Id.* § 261.201. 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 noted above, DFPS is the requestor. Thus in this instance, section 411.114 of the Government Code is applicable state law.

As stated above, section 411.114 of the Government Code allows 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). Although you claim the information at issue is excepted under section 552.108 of the Government Code, a specific right of access provision prevails over the Act’s general exceptions to disclosure. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the requestor in this instance is authorized to obtain CHRI from the department. *Id.* § 411.114. Consequently, 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 pertaining to offense report numbers 10-0500597 and 10-0701276 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, pursuant to section 411.114 of the Government Code, the department must release CHRI from the requested information not pertaining to child abuse that depicts the individual at issue as a suspect, arrestee, or criminal defendant, to the extent such information exists. To the extent it exists, any remaining information at issue must be withheld under section 552.101 in conjunction with common-law privacy. The department must release CHRI pertaining to offense report numbers 10-0500597 and 10-0701276 pursuant to section 411.114 of the Government Code but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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

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<sup>1</sup>We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,

A handwritten signature in black ink that reads "Claire Morris Sloan". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tp

Ref: ID# 397789

Enc. Submitted documents

c: Requestor  
(w/o enclosures)