



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2010

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2010-17087

Dear Mr. Mann:

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# 399806 (GCA# 10-0684).

The Garland Police Department (the "department") received a request for all reports pertaining to a specified address and three named individuals during a specified time period. You state you have released some of the responsive information. You claim 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.

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 three named individuals. Thus, this request requires the department to compile the named individuals' criminal histories and implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records listing any of the named individuals as a suspect, arrestee, or criminal defendant, such records are generally confidential under common-law privacy.

We note, in this instance, the requestor is the spouse of one of the named individuals. Thus, the requestor may be acting as the authorized representative of her spouse. We further note the requestor is a step-parent of another of the named individuals, a minor child. Thus, the requestor may have a right of access to information that would ordinarily be withheld to protect the minor child's common-law privacy. A parent has a right of access to their minor child's private information under section 552.023 of the Government Code. Section 552.023 of the Government Code states a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See Gov't Code § 552.023(a)*; *Open Records Decision No. 481 at 4 (1987)* (governmental body may not deny access to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Accordingly, if the requestor is not acting as the authorized representative of her spouse, then to the extent the department maintains law enforcement records listing this individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. Conversely, to the extent the requestor is acting as the authorized representative of her spouse, she has a right of access to the private information of her spouse, and it may not be withheld from her under section 552.101 in conjunction with common-law privacy. Additionally, if the requestor is not the legal guardian of the minor child at issue, then to the extent the department maintains law enforcement records depicting the minor child at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the legal guardian of the minor child at issue, she has a right of access to the private information of the minor child at issue, and the department may not withhold any of the minor child's private information from her under section 552.101 in conjunction with common-law privacy.

To the extent the requestor is the authorized representative of her spouse, we will address your argument under section 552.101 of the Government Code. Section 552.101 also encompasses information protected by section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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). You state the information you have noted is part of an investigation 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). Upon review, we agree the information you have noted is subject to chapter 261 of the Family Code. Therefore, we conclude the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we address your remaining argument under section 552.101, to the extent the requestor is the legal guardian of the named juvenile. Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You argue portions of the submitted information are subject to section 58.007(c). Upon review, we find the information you have noted involves allegations of juvenile conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "conduct indicating a need for supervision" as "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Thus, this information is subject to section 58.007(c). As noted above, the requestor is the step-parent of the juvenile offender at issue. Under section 58.007(e), a parent or guardian of the juvenile offender may inspect law enforcement records concerning the parent's child. *Id.* § 58.007(e). Therefore, if the requestor is the parent or guardian of the juvenile offender at issue, then the information at issue may not be withheld on the basis of section 58.007(c) of the Family Code. We note a portion of the information at issue is subject to Chapter 411 of the Government Code. Therefore, pursuant to section 58.007(j)(2) of the Family Code, we will consider the applicability of this confidentiality provision to the information at issue.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of

CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find a portion of the information at issue, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the marked information under section 552.101 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of her spouse, then to the extent the department maintains law enforcement records listing this individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. Further, if the requestor is not the legal guardian of the minor child at issue, then to the extent the department maintains law enforcement records depicting the minor child at issue as a juvenile suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the authorized representative of her spouse, then the department must withhold the information you have noted under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the parent or guardian of the juvenile, then the department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code and must release any remaining information pursuant to section 58.007(e) 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 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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 399806

Enc. Submitted documents

c: Requestor
(w/o enclosures)