



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2010

Ms. T. Trisha Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-18501

Dear Ms. Dang:

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# 402764.

The Corpus Christi Police Department (the "department") received a request for any police reports or calls for three specified addresses and three named individuals. You claim that 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 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 if it (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. *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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the Department of Public Safety (the "DPS") is required to provide criminal history record information ("CHRI") to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded that a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. Open Records Decision No. 655 at 4 (1997). The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides that "the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). The requestor is with the Corpus Christi Housing Authority (the "housing authority") and seeks the CHRI of three named individuals. The housing authority is authorized to receive CHRI from the DPS, and pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). Accordingly, the housing authority is also authorized to receive CHRI from a local criminal justice agency, such as the department. *See* ORD 655; *see also* Gov't Code §§ 411.083(b)(2), 411.087(a). 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." Gov't Code § 411.082(2).

Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult and juvenile applicants or tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). In this instance, we cannot determine if the requestor is seeking the release of CHRI of a tenant or

applicant for purposes of applicant screening, lease enforcement, or eviction. Consequently, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants and the department determines that the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, we conclude that the department must release information to this requestor that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions; to the extent they exist, the department must withhold the remainder of the records at issue from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). However, if the department determines that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, it must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted reports that do not list any of the named individuals as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address your arguments against the disclosure of this information.

Section 552.101 also encompasses information other statutes make confidential, such as section 58.007 of the Family Code, which provides in pertinent part 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.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). 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). Upon review, we find the information we have marked involves allegations of a juvenile engaged in delinquent conduct which occurred after September 1, 1997. Therefore, we conclude this information is subject to section 58.007(c) of the Government Code. Thus, the department must withhold the information we have marked under section 552.101 on that basis.¹

Section 552.101 also encompasses laws that make CHRI confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI DPS maintains, except 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. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). However, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we conclude none of the remaining information consists of CHRI for the purposes of chapter 411 of the Government Code. Accordingly, the department may not withhold any of the remaining information on that basis.

Section 552.101 also encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You state the city of Corpus Christi is part of an emergency communication district that was established under section 772.318.² You represent that the information you have marked consists of the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a 9-1-1 service supplier. Accordingly, we agree the department must withhold the telephone numbers and addresses you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

We note the remaining information contains a Texas driver's license number subject to section 552.130 of the Government Code.³ Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the information we have marked under section 552.130.⁴

In summary, to the extent the department maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant and the department determines that the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, the department must release information that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions. In that instance, the department must withhold the remainder of the compiled criminal history information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement or eviction, the department must withhold law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Government Code. The department must withhold the telephone numbers and addresses you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the Texas

²Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note this office 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.

driver's license number we have marked under section 552.130 of the Government Code. 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 402764

Enc. Submitted documents

c: Requestor
(w/o enclosures)