



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2010

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

OR2010-18831

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# 402939.

The Bryan Police Department (the "department") received a request for "records for drugs, domestic violence, and any calls made" regarding a specified address and six named individuals, as well as records pertaining to case number 10-0900364. You indicate the department does not possess responsive information pertaining to one of the named individuals.<sup>1</sup> You claim the requested 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.

Initially, we note the department did not submit any information pertaining to two of the named individuals. Thus, to the extent any additional information responsive to the request for information existed and was maintained by the department on the date the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open*

---

<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 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) Except as provided by Section 261.203, the 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). Upon review, we find report number 10-0700907 was used or developed in 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). In this instance, however, the requestor is a representative of the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) provides “[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare shall be referred immediately to [DFPS].” *See id.* § 261.105(a). In this instance, the suspect of child abuse in report number 10-0700907 is the father of the alleged child victim of abuse, and, therefore, responsible for the child’s care, custody, or welfare. Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply. Although you claim report number 10-0700907 is excepted under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code, a specific statutory right of access prevails over the common law and general exceptions to disclosure under the Act. *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); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the department must release report number 10-0700907 to this requestor pursuant to section 261.105(a).

Additionally, we agree report number 10-0900364 was used or developed in an investigation of alleged or suspected child abuse conducted by the department. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of section 22.011 of the Penal Code as person under 17 years of age). Thus, report number 10-0900364 is generally confidential under section 261.201(a). Fam Code § 261.201. In this instance, the suspect of child abuse is not responsible for the child victim’s care, custody, or welfare; therefore, section 261.105(a) of the Family Code is not applicable. *See id.* § 261.105(a). 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. Section 411.114 provides 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). Thus, section 411.114 allows DFPS to obtain from a criminal justice agency CHRI concerning an individual who is the subject of a report of abuse or neglect of a child. Gov't Code § 411.114(a)(2), (a)(4). Accordingly, the requestor in this instance is authorized to obtain CHRI from the department regarding the individual who is the subject of the abuse in report number 10-0900364. *See Collins*, 297 S.W.3d at 415; *CenterPoint Energy*, 436 F.3d at 544; *see also* ORDs 613 at 4, 451 at 4. 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 report number 10-0900364 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we address your arguments for the remaining information. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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 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 unspecified information pertaining to the named individuals. This request requires the department to compile the named individuals' criminal histories and thus implicates their rights to privacy. Thus, 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.

As previously noted, 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). In this case, the DFPS investigator does not state whether any of the named individuals are the subject of a report of abuse or neglect of a child. For one of the named individuals, which we have noted, we are unable to conclude section 411.114 grants the requestor a right of access to any of the requested information. Thus, we must rule conditionally in regards to this individual. If this individual is a subject of a report of abuse or neglect of a child, then the department must release the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from the requested documents depicting this individual as a possible suspect, arrestee, or criminal defendant pursuant to section 411.114. *See* ORDs 451, 613. Otherwise, the CHRI is not subject to release to this requestor under section 411.114 and to the extent the information depicts this named individual as a possible suspect, arrestee, or criminal defendant, it is excepted from disclosure in its entirety under section 552.101 in conjunction with the common-law right to privacy. *Cf. Reporters Comm.*, 489 U.S. 749. We note, one of the named males, which we noted, is the subject of a report of child abuse that was reported to DFPS. Thus, the requestor in this instance is authorized to obtain CHRI regarding that individual from the reports we marked. Gov't Code § 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 pursuant to section 411.114 and the remaining information must be withheld under section 552.101 in conjunction with common-law privacy. To the extent it exists, any remaining information listing the other named individuals not suspected of child abuse or neglect as suspects, arrestees, or criminal defendants must be withheld under section 552.101 in conjunction with common-law privacy.

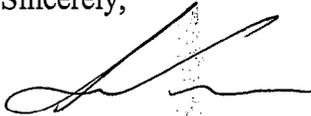
In summary, report number 10-0700907 must be released to this requestor pursuant to section 261.105(a) of the Family Code. The department must release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.114 of the Government Code, but must withhold the remaining information pertaining to report number 10-0900364 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the named individual we noted is the subject of a report of abuse or neglect of a child, then the department must release the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from the requested information depicting this individual as a suspect, arrestee, or criminal defendant pursuant to section 411.114 of the Government Code and withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. In regards to the male individual in the reports we marked, 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

pursuant to section 411.114 of the Government Code and withhold the remaining information under section 552.101 in conjunction with common-law privacy. To the extent it exists, any remaining information listing the named individuals not suspected of child abuse or neglect as suspects, arrestees, or criminal defendants must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 402939

Enc. Submitted documents

c: Requestor  
(w/o enclosures)