



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 19, 2011

Ms. Andrea M. Gardner
City Manager
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR2011-00842

Dear Ms. Gardner:

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# 406430.

The City of Copperas Cove (the "city") received a request for police records pertaining to a named individual. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim.

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."¹ 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

¹The 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).

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 a named individual. This request requires the city to compile the named individual's criminal history and, thus, implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city 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:

...

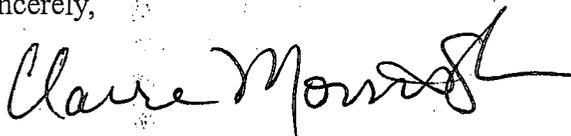
(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2)[.]

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 the named individual is the subject of a report of abuse or neglect of a child, but only requests information about the named individual. Therefore, to the extent the named individual is the subject of a report of abuse or neglect of a child that was reported to DFPS, pursuant to section 411.114 of the Government Code, the city 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 depicting that 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 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). To the extent it exists, any remaining information at issue must be withheld under section 552.101 in conjunction with common-law privacy.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/vb

²As our ruling is dispositive, we need not address the remaining argument against disclosure of the requested information.

Ref: ID# 406430

Enc. Submitted documents

c: Requestor
(w/o enclosures)