



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2011

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

OR2011-00974

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# 406429.

The City of Copperas Cove (the "city") received a request for police records regarding 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 and reviewed the submitted information.

We note the submitted information may be subject to section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in pertinent part:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). The submitted incident report numbers 10-4335 and 10-4569 reflect they were used or developed in investigations conducted by the city's police department (the "department") of alleged or suspected child abuse. *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). We find these reports are within the scope of section 261.201(a) of the Family Code. Section 261.201(a) provides 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). In this instance, chapter 411 of the Government Code constitutes "applicable state law." We note the requestor is a representative of the Child Protective Services Division of the Texas Department of Family and Protective Services ("DFPS").

Section 411.114 of the Government Code 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. *Id.* § 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 report numbers 10-4335 and 10-4569. Although you claim these reports are excepted under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See 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).* Consequently, the city must release the information in report numbers 10-4335 and 10-4569 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 numbers 10-4335 and 10-4569 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also 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). 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 requires the city to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy.

As previously discussed, however, section 411.114 of the Government Code 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). As previously noted, the named individual is the subject of reports of alleged or suspected child abuse. Thus, the requestor, in this instance, is authorized to obtain CHRI regarding that individual from the remaining submitted incident report number 10-1714. *See id.* § 411.114; *see also 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 Nos. 613 at 4, 451 at 4. Consequently, the city must release the information in report number 10-1714 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, but must withhold the remaining information in report number 10-1714 under section 552.101 in conjunction with common-law privacy.

In summary, the city must release the information in report numbers 10-4335 and 10-4569 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 numbers 10-4335 and 10-4569 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must release the information in report number 10-1714 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 in report number 10-1714 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, 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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 406429

Enc. Submitted documents

c: Requestor
(w/o enclosures)