



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2011

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-03142

Dear Ms. Villarreal:

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# 410608 (Waco reference number LGL-10-1763).

The Waco Police Department (the "department") received a request for all call-outs and reports related to three named individuals and three specified addresses. You state that some of the information has been provided to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 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 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. This office has found that 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.

The requestor seeks "all call outs/reports" related to three named individuals. Thus, we find the request requires the department to compile unspecified law enforcement records concerning the individuals, thus implicating their right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor here is an investigator for the Child Protective Services Division of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code provides, in part:

(a)(2) [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 Department of Family and Protective Services 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:

...

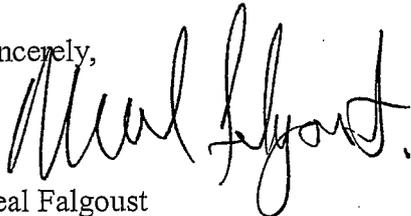
(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, 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." *Id.* § 411.082(2). In this case, the requestor does not specifically state the named individuals are suspects in a DFPS report of abuse or neglect of a child. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the CHRI, and we must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). Therefore, if the named individuals are suspects in a DFPS report of abuse or neglect of a child, the department must release the CHRI, as defined by section 411.082(2), about that individual and withhold the remaining information on privacy grounds to the extent it depicts the named individuals as a suspect, arrestee, or criminal defendant. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet. h.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle). Otherwise, the CHRI is not subject to release to this requestor under section 411.114; and to the extent the information depicts the named individuals as a suspect, arrestee, or criminal defendant, it is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

¹As our ruling is dispositive, we do not address your arguments against disclosure.

Ref: ID# 410608

Enc. Submitted documents

c: Requestor
(w/o enclosures)