



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2011

Chief James S. Kelley
Sweetwater Police Department
P.O. Box 450
Sweetwater, Texas 79556

OR2011-13806

Dear Chief Kelley:

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# 431623.

The Sweetwater Police Department (the "department") received a request for information involving either of two named individuals or two specified addresses during a specified period. You claim 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 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, in part, seeks all reports pertaining to the named individuals. This part of the request, in part, requires the department to compile the named individuals' criminal histories and, thus, implicates those individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, such information is confidential under section 552.101 in conjunction with common-law privacy as a compilation of criminal history.

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) an alleged perpetrator in 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 applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person 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, this requestor has a right of access under section 411.114 to CHRI in information held by the department if it involves an alleged perpetrator in a report of child abuse or neglect. Although you raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act, of which section 552.108 is one. *See Open Records Decision No. 451 (1986)*. In this case, the DFPS investigator does not state the named individuals are the alleged perpetrators in a report of abuse or neglect of a child, but only requests information about the named individuals. Therefore, to the extent the named individuals are alleged perpetrators in a report of child abuse or neglect that was reported to DFPS, the department 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 any responsive information depicting a named individual 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.) (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). To the extent it exists, any remaining information depicting the named individuals as suspects, arrestees, or criminal defendants must be withheld under section 552.101 in conjunction with common-law privacy.¹

We note that submitted call sheet number 11-08032 does not identify either named individual as a suspect, arrestee, or criminal defendant. Therefore, this report may not be withheld on the basis of common-law privacy as part of criminal history compilation. However, we understand you to claim this call sheet is excepted by section 552.108 of the Government Code. Thus, we will address your claims under section 552.108 for the call sheet.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(4)(A) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that . . . is

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of the requested information.

prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation.” Gov’t Code § 552.108(a)(4)(A).

You state the department took the 9-1-1 call at issue in call sheet report number 11-08032, but that it never investigated the incident at issue in that call. Although you cite to subsections 552.108(a)(1) and (a)(4), you provide no arguments explaining how release of call sheet report number 11-08032 would interfere with the detection, investigation, or prosecution of crime. Furthermore, you acknowledge the call sheet was not prepared by an attorney in anticipation of or in the course of preparing for criminal litigation. Because you have failed to demonstrate the applicability of section 552.108, the department may not withhold any submitted information on that basis.

In summary, to the extent either of the named individuals is the alleged perpetrator in a report of abuse or neglect of a child that was reported to DFPS, pursuant to section 411.114 of the Government Code, the department 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 it exists, any remaining information in such records must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Call sheet report number 11-08032 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/akg

Ref: ID# 431623

Enc. Submitted documents

c: Requestor
(w/o enclosures)