



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2012

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

OR2012-04503

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# 448749.

The City of Sweetwater (the "city") received a request for any police reports or calls involving a named individual at a specified location, during a specified period of time. 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 you have indicated some of the information is not responsive to the request. We agree most of the information you have marked is not responsive to the instant request because it does not fall with the specified period of time. This decision does not address the public availability of the non-responsive information, and the city need not release that information in response to this request. However, a portion of the information you have marked as non-responsive, which we have marked, is within the time period provided by the requestor and, therefore, is responsive to the instant request. As you raise no arguments for this information, it must be released.

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.

In this instance, the requestor seeks access to unspecified law enforcement records relating to the named individual. Thus, we agree this request requires the city to compile the named individual's criminal history and thereby implicates her right to privacy. Accordingly, to the extent the city maintains any information that depicts the named individual as a suspect, arrestee, or criminal defendant, the city must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestor is an employee 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 [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 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) or (3).

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 id.* § 411.082(2). Thus, this requestor has a right of access under section 411.114 to CHRI in information held by the city 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 employee does not state the named individual is the alleged perpetrator in 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 an alleged perpetrator in a report of child abuse or neglect that was reported to DFPS, 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 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 individual as a suspect, arrestee, or criminal defendant must be withheld under section 552.108 in conjunction with common-law privacy.¹

We note a portion of the responsive information does not depict the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interest of the named individual and may not be withheld as a compilation of the individual's criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will consider your argument under section 552.108 against the disclosure of this information.

Section 552.108(a)(1) of the Government Code 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 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). You contend a portion of the responsive information relates to a pending criminal investigation. Based on your representation and our review, we conclude that release of the information we have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ.

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

App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you generally may withhold the information we have marked under section 552.108(a)(1).

However, we note, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the city may withhold the marked information under section 552.108(a)(1) of the Government Code.

We note the requestor cites Attorney General Opinion No. GA-0879 (2011) and states she has a right of access to the remaining information under sections 261.105 and 261.301 of the Family Code. Section 261.105 of the Family Code provides, in relevant part:

(a) All 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 the [DFPS] or the designated agency.

(b) The [DFPS] or designated agency shall immediately notify the appropriate state or local law enforcement agency of any report it receives, other than a report from a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect.

Fam. Code § 261.105(a), (b). Section 261.301(a) provides:

(a) With assistance from the appropriate state or local law enforcement agency as provided by this section, the [DFPS] or designated agency shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare.

Id. § 261.301(a). In Attorney General Opinion No. GA-0879, we found “[t]hese two statutes, taken together, contemplate a complete and total sharing of information between the [DFPS] and a local law enforcement agency so long as the alleged child abuse or neglect is ‘committed by a person responsible for a child’s care, custody, or welfare.’” Attorney General Opinion GA-0879. Thus, the opinion concluded a law enforcement agency is required to provide information to DFPS about alleged child abuse or neglect by a person responsible for the child’s care, custody, or welfare. See *id.* at 2. You state the city does not have a report alleging child abuse or neglect by the named individual relating to a child to whom she is responsible for the care, custody, or welfare. Based on your representation, we find the requestor has failed to demonstrate she has a right of access under sections 261.105 and 261.301.

In summary, to the extent the named individual is an alleged perpetrator in a report of child abuse or neglect that was reported to DFPS, 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 any responsive information depicting a named individual as a suspect, arrestee, or criminal defendant under section 411.114 of the Government Code. To the extent it exists, any remaining information depicting the named individual as a suspect, arrestee, or criminal defendant must be withheld under section 552.101 in conjunction with common-law privacy. To the extent the named individual is not an alleged perpetrator in a report of child abuse or neglect that was reported to DFPS, the city must withhold, to the extent it exists, any information depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 in conjunction with common-law privacy in its entirety. With the exception of basic information, which must be released, the city may withhold the information we have marked under section 552.103(a)(1) of the Government Code. The remaining information 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/ag

Ref: ID# 448749

Enc. Submitted documents

c: Requestor
(w/o enclosures)