



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2012

Ms. Laura Ingram
Assistant District Attorney
Wichita County
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2012-16106

Dear Ms. Ingram:

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# 467504.

The Wichita County Sheriff's Office (the "sheriff's office") received a request for the criminal history of a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it does not pertain to the named individual. We have marked this non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release non-responsive information in response to the request.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82.

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. However, we note information relating to routine traffic offenses does not implicate privacy concerns. *See Gov't Code* § 411.082(2)(B).

In this instance, the request seeks the criminal history of named individual. Thus, the request requires the sheriff's office to compile unspecified law enforcement records pertaining to a named individual. This request for a compilation of unspecified law enforcement records implicates the privacy rights of the named individual. Therefore, to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must generally withhold such records under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that pertains to routine traffic offenses. This information does not consist of a compilation of the named individual's criminal history, and it may not be withheld under section 552.101 on that basis.

We note, however, the requestor may have a right of access to some of the requested information. Section 411.089(a) of the Government Code provides, "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information ["CHRI"] maintained by the [Department of Public Safety] about a person." *See id.* § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] [CHRI] maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

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

Id. § 411.087(a)(2). We note CHRI is defined as “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, in this instance, the requested information, to the extent it exists, may contain CHRI. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor in this instance is a representative of a “criminal justice agency,” she is authorized to obtain CHRI from the sheriff’s office pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Code Crim. Proc. art. 60.01(1).

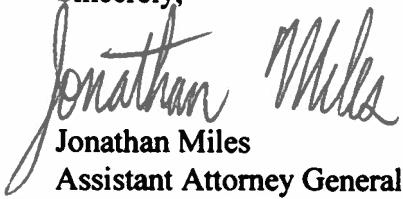
In this instance, the requestor is an employee of the Oklahoma Department of Human Services. We are unable to determine whether she is a representative of a criminal justice agency or whether she intends to use the CHRI for a criminal justice purpose. Consequently, ~~if the sheriff’s office determines the requestor is a representative of a criminal justice agency~~ for purposes of chapter 411 and she intends to use the CHRI for a criminal justice purpose, then the sheriff’s office must make available to the requestor CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, to the extent any 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); Open Records Decision Nos. 613 at 4 (1993) (exception in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the sheriff’s office must withhold any remaining information that depicts the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. If the sheriff’s office determines the requestor either is not a representative of a criminal justice

agency for purposes of 411 or does not seek this information for a criminal justice purpose, then to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such records 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,


Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 467504

Enc. Submitted documents

c: Requestor
(w/o enclosures)