



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2012

Ms. Sandy Murillo
Records Clerk
Saginaw Police Department
505 West McLeroy Boulevard
Saginaw, Texas 76179

OR2012-17259

Dear Ms. Murillo:

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# 469253.

The Saginaw Police Department (the "department") received a request for police reports regarding four named individuals. 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). 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

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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 individuals. Thus, we find this request requires the department to compile the named individuals' criminal history and thereby implicates each individual's right to privacy. Accordingly, to the extent the department maintains any information that depicts the named individuals as suspects, arrestees, or criminal defendants, the department 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 investigator with 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 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 employee 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 the named individuals as suspects, arrestees, or criminal defendants. *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

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

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

Ref: ID# 469253

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**