



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2012

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

OR2012-20343

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# 474181.

The Wichita County Sheriff's Office (the "sheriff's office") received a request for incident reports and background information on three named individuals. You claim the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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 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) it 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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 that 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 individuals. Thus, this request requires the sheriff's office to compile the named individuals' criminal histories and thereby implicates their privacy interests. Therefore, to the extent the sheriff's office maintains any information that depicts the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor states she is requesting the information in her role as a Guardian ad Litem with the Domestic Relations Office of the Travis County Juvenile Probation Department (the "domestic relations office"). Section 411.1285(a) of the Government Code provides, "[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety] criminal history record information ("CHRI") that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code."¹ See Gov't Code § 411.1285(a); see also Fam. Code ch. 203 (governing administration of domestic relations offices). 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 [Texas Department of Public Safety] [CHRI] maintained by the [Texas 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.

Gov't Code § 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, the information at issue contains CHRI. However, a domestic relations office may receive CHRI only if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. See *id.* § 411.1285(a); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, when read together, sections 411.087 and 411.1285(a) of the Government Code may provide a domestic relations office a right of access to CHRI in the information at issue.

¹A "domestic relations office" is defined as "a county office that serves families, county departments, and courts to ensure effective implementation of this title." Fam. Code § 203.001(2).

Therefore, pursuant to section 411.1285(a), if the sheriff's office determines the requestor is with a domestic relations office created under chapter 203 of the Family Code and is providing services to a party to a proceeding under chapter 203 of the Family Code, then the sheriff's office must make available to the domestic relations office any CHRI of a party to the proceeding. *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). In that instance, the sheriff's office must withhold any remaining information that depicts the named individuals as suspects, arrestees, or criminal defendants under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the sheriff's office determines the requestor is not with a domestic relations office created under chapter 203 of the Family Code or is not providing services to a party to a proceeding under chapter 203 of the Family Code, then, to the extent the sheriff's office maintains any information that depicts the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.²

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/som

²As our ruling is dispositive, we need not address your remaining arguments against disclosure. We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code § 552.147(b)*.

Ref: ID# 474181

Enc. Submitted documents

c: Requestor
(w/o enclosures)