



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2013

Ms. Rebecca Hendricks Brewer
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P.O. Box 1210
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OR2013-06632

Dear Ms. Brewer:

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# 484824.

The Frisco Police Department (the "department"), which you represent, received a request for police records related to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. A compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

¹Although you also raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, you have waived your claim under this exception. *See* Gov't Code §§ 552.301, .302.

The request seeks unspecified records pertaining to the named individual. Thus, we find the request requires the department to compile the named individual's criminal history. However, we note the requestor has provided a signed authorization from the named individual for release of the information at issue. Thus, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to the named individual that would otherwise be withheld to protect his privacy. *See* Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”). Accordingly, the department may not withhold any of the submitted information under section 552.101 on the basis of the named individual's privacy interests in a compilation of his criminal history.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You assert incident report numbers 07089784 and 09079393 were used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse”

and “neglect” for purposes of section 261.201). Upon review, we find report numbers 07089784 and 09079393 are within the scope of section 261.201 of the Family Code. We note the requestor is a representative of the Family Court Services division of the Tarrant County Domestic Relations Office (the “domestic relations office”), and she indicates the parent of the child victim at issue in these reports has provided an authorized release to her. However, the parent at issue was suspected of committing the alleged or suspected abuse or neglect. Therefore, we determine the requestor does not have a right of access to these reports under section 261.201(k). *See id.* § 261.201(k). Nevertheless, section 261.201 of the Family Code also provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this regard.

Section 411.1285(a) of the Government Code provides in part, “[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 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.”² *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 the following:

(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] criminal history record information 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 criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). “Criminal history record information” 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 “criminal history record information.” However, a domestic relations office may only receive criminal history record information 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(c);

²A “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).

see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

In her request for information, the requestor states she is completing social studies for the court regarding the individual named in the request for information. *See* Fam. Code § 107.051(b) (domestic relations office may perform court-ordered social study). Therefore, if the department determines report numbers 07089784 and 09079393 relate to a person who is a party to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with chapter 261 of the Family Code, then the department must (1) make available to the requestor information from report numbers 07089784 and 09079393 that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions but (2) withhold the remaining information in report numbers 07089784 and 09079393 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, the department must withhold report numbers 07089784 and 09079393 in their entirety under section 552.101 in conjunction with section 261.201(a) if it determines either the information is not related 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 or disclosure of the information is not consistent with chapter 261 of the Family Code. *See id.* § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); *see also* ORD 440 at 2; Attorney General Opinions DM-353 at 4 n.6 (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in relevant part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). However, section 58.007 allows the review or copy of juvenile law enforcement records by a child or a child's parent or guardian. *Id.* § 58.007(e). Nevertheless, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2).

Report numbers 05046163 and 085147 involve juvenile conduct indicating a need for supervision or juvenile delinquent conduct occurring after September 1, 1997. Therefore, this information is subject to section 58.007. Thus, the department must withhold report number 05046163 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. As noted above, however, the requestor has provided a signed authorization for release of the information at issue from the juvenile offender named in report number 085147. Thus, the department may not withhold report number 085147 under section 552.101 of the Government Code in conjunction with section 58.007(c). *See id.* § 58.007(e). Nevertheless, pursuant to section 58.007(j)(2), we must address your arguments under section 552.101 of the Government Code to withhold this report. *See id.* § 58.007(j)(2). In addition, we find you have not demonstrated how the remaining reports, which do not identify a juvenile suspect or offender, consist of juvenile law enforcement records for purposes of section 58.007(c). Accordingly, we conclude you have not demonstrated the applicability of section 58.007(c) of the Family Code to the remaining information. Therefore, the department may not withhold any of the remaining

information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We now address your remaining arguments against disclosure of report number 085147 and the remaining information. Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means “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.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find you have failed to demonstrate any of the remaining information consists of CHRI for purposes of chapter 411. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with section 411.083.

Section 552.101 of the Government Code encompasses section 611.002 of the Health and Safety Code. Section 611.002 provides “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate, or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find you have failed to demonstrate any of the remaining information consists of mental health records for purposes of section 611.002. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of section 611.002(a) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code, which are applicable to emergency 9-1-1

districts established in accordance with chapter 772 of the Health and Safety Code. *See* Open Records Decision No. 649 (1996). These sections make originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You have not demonstrated the remaining information contains any information relating to a 9-1-1 caller that was furnished by a service supplier. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with section 772.118, section 772.218, or section 772.318.

Section 552.101 of the Government Code encompasses section 773.091 of the Health and Safety Code, which is applicable to emergency medical services (“EMS”) records, and provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(a)-(c). This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). Upon review, we find you have failed to demonstrate how any of the remaining information constitutes records of the identity, evaluation, or treatment of a patient created by EMS personnel or a physician providing medical supervision or maintained by an EMS provider. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

In summary, the department must withhold report numbers 07089784 and 09079393 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the

Family Code; however, the department must release from these reports information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions if it determines this information is related to a person who is a party to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with chapter 261 of the Family Code. The department must withhold report number 05046163 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must release the remaining information.³

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 484824

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a). Accordingly, if the department receives another request for this same information from another requestor, it must again seek a ruling from this office.