



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2013

Mr. Robert G. Schleier, Jr.
Counsel for the City of Kilgore
Law Office of Robert G. Schleier, Jr.
116 North Kilgore Street
Kilgore, Texas 75662

OR2013-08908

Dear Mr. Schleier:

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# 488644.

The Kilgore Police Department (the "department"), which you represent, received a request for police records regarding a named individual. You state the department has released some of the requested information. You further state the department does not maintain a portion of the requested information.¹ You claim some of the submitted 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.

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

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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.

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.

The doctrine of common-law privacy also protects the types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*, which includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See Indus. Found.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, a governmental body is required to withhold an entire report when identifying information is inextricably entwined with other releasable information or when the requestor knows the identity of the alleged victim. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the submitted information relates to an investigation of a sexual assault. Thus, based on the circumstances surrounding the request and the requestor's relationship with the individual named in the request, we believe the requestor knows the identity of the victim; therefore, withholding only the identifying information from the requestor would not preserve the victim's common law right to privacy. Accordingly, we conclude the entirety of the submitted information is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is a representative of the Dallas County Domestic Relations Office (the “office”) and may have a right of access to portions of the submitted information

pursuant to section 411.1285 of the Government Code. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] 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:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] 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). We note that “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(a); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

In this instance, the requestor states she was appointed by the Dallas County Family District Courts to conduct a social study of the individual named in the request. See Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Therefore, if the department determines the information at issue relates to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203 of the Family Code, then we find this requestor has a right of access to the criminal history records contained in this information. We note the requestor’s statutory right of access prevails over the doctrine of common-law privacy. 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

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).

law). Thus, if the department determines the information at issue relates to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203, the department must release information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. In such case, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, if the department determines that the information at issue does not relate to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203 of the Family Code, then the department must withhold the submitted information in its entirety pursuant to 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 488644

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³In that event, we note the requestor has a special right of access to the information the department is releasing. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.