



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2013

Ms. Rachel L. Lindsay  
For City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2013-11127

Dear Ms. Lindsay:

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# 491620 (McKinney ORR# 107151).

The McKinney Police Department (the "department"), which you represent, received a request for all reports involving a named individual, including several specified reports. You state the department has released some of the information. You claim 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) 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. *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 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. U.S. 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 courthouses 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.

Upon review, we find part of this request requires the department to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual's right to privacy. However, the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Eastern District of Texas (the "probation office") and might have a right of access to some of this otherwise protected information. Section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain from the Texas Department of Public Safety ("DPS") any criminal history record information ("CHRI") maintained by the DPS about a person. *See* Gov't Code § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from [DPS CHRI] maintained by [DPS] 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, the requested information may contain CHRI. We understand the requestor represents a criminal justice agency. *See id.* § 411.082(3)(A) (defining "criminal justice agency" 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"). 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 criminal history record information). Thus, the requestor is authorized to obtain CHRI from the department 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).

Therefore, if the department determines the requestor intends to use CHRI for a criminal justice purpose, then to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI from those records that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *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) (exceptions 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 event, to the extent it exists, the department must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor does not intend to use CHRI for a criminal justice purpose, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the requestor does not have a right of access to any CHRI under section 411.089. In that event, to the extent it exists, the department must withhold those records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

You have submitted records that were specifically requested by the probation office. As this information does not require the department to compile unspecified law enforcement records, common-law privacy is not applicable and the department may not withhold this information on that basis. However, we will address your remaining arguments under section 552.101 of the Government Code for this information.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). Upon review, we find report number 03-30875 was used or developed in an investigation of alleged child abuse, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.021 as person younger than 17 years of age). However, as previously mentioned, the requestor is a representative of the probation office, and section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Report number 03-30875 is also subject to section 58.007 of the Family Code, which constitutes applicable state law for purposes of section 261.201(a). Accordingly, we will address section 58.007 of the Family Code for this report and the remaining information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. *Id.* § 58.007(c). Section 58.007 provides in part:

(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.

*Id.* § 58.007(c), (e). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). Upon review, we find report

numbers 02-16658, 03-30875, 04-0001385, and 04-11171 involve delinquent conduct by a child or conduct by a child that indicates a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Thus, these reports are subject to section 58.007(c).

However, as previously noted, the requestor is a representative of the probation office, and section 58.007(e) gives a “criminal justice agency as . . . defined by Section 411.082” a right of access to juvenile law enforcement records. *Id.* § 58.007(e). We understand the probation office is a criminal justice agency as defined by section 411.082. Therefore, the requestor has a right of access to report numbers 02-16658, 04-0001385, and 04-11171 under section 58.007(e) of the Family Code. Because the requestor has a right of access to these reports under section 58.007(e), the department may not withhold them under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Report number 03-30875 is subject to both section 261.201 and section 58.007 of the Family Code. Records subject to section 261.201 may be disclosed under applicable state law and for purposes consistent with the Family Code. Section 58.007 is applicable state law allowing disclosure to the requestor. However, the department must also determine whether releasing this report to the probation department is consistent with the Family Code. If the department determines the probation office intends to use report number 03-30875 for purposes consistent with the Family Code, then the department must release that report to the probation office. If the department determines the probation office does not intend to use report number 03-30875 for purposes consistent with the Family Code, then the department must withhold it in its entirety pursuant to section 552.101 Government Code in conjunction with section 261.201 of the Family Code. *See id.* § 261.201(b)–(g), (k), (l) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute).

The remaining information involves the named individual as a suspect when he was older than seventeen. Accordingly, the remaining information is not subject to section 58.007(c) of the Government Code and may not be withheld under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)–(2). Accordingly, the department must withhold the information we marked under section 552.130 of the Government Code.

In summary, if the department determines the requestor intends to use the CHRI for a criminal justice purpose, then to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI from such records

that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that event, to the extent any unspecified law enforcement records exist, the department must withhold the remainder of those records under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, then to the extent the department maintains unspecified law enforcement records that list the individual as a suspect, arrested person, or criminal defendant, the department must withhold those unspecified law enforcement records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. As for report numbers 02-16658, 04-0001385 and 04-11171, the requestor has a right of access to these reports under section 58.007(e) of the Family Code, and the department may not withhold them under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. As for report number 03-30875, if the department determines the requestor intends to use this report for purposes consistent with the Family Code, then the department must release that report to the requestor in its entirety. If the department determines the requestor does not intend to use that report for purposes consistent with the Family Code, then the department must withhold that report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information we marked under section 552.130 of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 491620

Enc. Submitted documents

c: Requestor  
(w/o enclosures)