



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2013

Ms. Alexis G. Allen
Counsel for the City of Rowlett
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2013-14370

Dear Ms. Allen:

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# 496577 (Rowlett File No. 60965).

The City of Rowlett (the "city"), which you represent, received a request for all police records related to three 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 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 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 compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all police records pertaining to three named individuals. Thus, we find the request requires the city to compile the named individuals' criminal histories. We note the requestor provided an authorization to release information signed by the named individuals. Section 552.023 of the Government Code gives a person's authorized representative 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 required public disclosure by laws intended to protect that person's privacy interests. *See Gov't Code § 552.023*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Additionally, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. You have submitted reports that do not list the named individuals as suspects, arrestees, or criminal defendants. This information does not consist of a compilation of the named individuals' criminal histories. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 numbers 09000868, 11001168, and 13019341 were used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of this section

as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find report numbers 09000868, 11001168, and 13019341 are generally confidential under section 261.201(a) of the Family Code. Nevertheless, section 261.201 of the Family Code 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.”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 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); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

In this instance, the requestor states he is completing a court-ordered social study regarding the individuals named in the request for information. *See* Fam. Code § 107.051(b) (domestic

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).

relations office may perform court-ordered social study). Therefore, if the city determines report numbers 09000868, 11001168, and 13019341 relate to persons who are parties 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 city must (1) make available to the requestor information from report numbers 09000868, 11001168, and 13019341 that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and (2) withhold the remaining information in report numbers 09000868, 11001168, and 13019341 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, the city must withhold report numbers 09000868, 11001168, and 13019341 in their entirety under section 552.101 in conjunction with section 261.201(a) if it determines either the information is not related to persons who are parties 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.² *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986); Attorney General Opinions DM-353 at 4 n.6 (1995) (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 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You inform us the remaining reports relate to criminal cases that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the remaining reports.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city

²As our ruling is dispositive for this information, we need not consider your remaining argument against its disclosure.

may generally withhold the remaining reports under section 552.108(a)(2) of the Government Code.

As previously noted, section 411.1285(a) of the Government Code allows a domestic relations office to obtain 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 of the Family Code. Further, as discussed above, the requestor states he is completing a court-ordered social study regarding the individuals named in the request for information. *See* Fam. Code § 107.051(b). Therefore, if the city determines the remaining reports relate to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code, then, pursuant to section 411.1285(a), the city must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and with the exception of basic information, may withhold the remainder of the remaining reports under section 552.108(a)(2) of the Government Code. However, if the city determines the remaining reports do not relate to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, then the city may, with the exception of basic information, withhold the remaining reports under section 552.108(a)(2) of the Government Code. *See* ORD 440 at 2; Attorney General Opinions DM-353 at 4 n.6, JM-590 at 4-5.

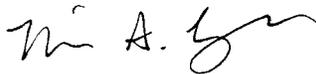
In summary, if the city determines report numbers 09000868, 11001168, and 13019341 are related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with chapter 261 of the Family Code, then the city must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and withhold the remaining information in these reports under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. However, if the city determines either the information at issue is not related to persons who are parties 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, then the city must withhold report numbers 09000868, 11001168, and 13019341 in their entireties under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. If the city determines the remaining reports relate to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, then the city must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and with the exception of basic information, may withhold the remainder of the remaining reports under section 552.108(a)(2) of the Government Code. However, if the city determines the remaining reports do not relate to persons who are parties to a proceeding in which the domestic relations office is providing

services permitted under chapter 203 of the Family Code, then the city may, with the exception of basic information, withhold the remaining reports under section 552.108(a)(2) of the Government Code.

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, 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 496577

Enc. Submitted documents

c: Requestor
(w/o enclosures)