



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 10, 2014

Mr. John A. Haislet  
Assistant City Attorney  
Legal Department  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2014-00712

Dear Mr. Haislet:

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# 510648.

The College Station Police Department (the "department") received a request for all records concerning four named individuals. You inform us you have released some of the requested information to the requestor. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007 provides in relevant 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.

*Id.* § 58.007(c). For purposes of section 58.007(c), a “child” is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find report numbers 97-010361, 99-000950, 97-010257, 97-0010351, and 97-010760 involve a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. It does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. Therefore, we find report numbers 97-010361, 99-000950, 97-010257, 97-0010351, and 97-010760 are generally confidential under section 58.007(c) of the Family Code. Accordingly, the department must withhold report numbers 97-010361 and 99-000950 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>1</sup>

In this instance, however, the requestor states she is completing a social study regarding an individual to whom report numbers 97-010257, 97-0010351, and 97-010760 pertain. Section 58.007 of the Family Code also provides that “[l]aw enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 [of the Family Code and] a criminal justice agency as that term is defined by Section 411.082, Government Code[.]” *Id.* § 58.007(e). Section 58.101(5) of the Family Code defines a “juvenile justice agency” as an agency that has custody or control over juvenile offenders. *Id.* § 58.101(5). Section 411.082(3) of the Government Code defines a “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.” Gov’t Code § 411.082(3)(A). You do not indicate, and we are not otherwise able to determine, whether the requestor seeks access to the information subject to section 58.007 of the Family Code on behalf of a juvenile justice agency or a criminal justice agency for purposes of section 58.007(e) of the Family

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Code. Nevertheless, if the department is able to determine the requestor represents a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right of access to report numbers 97-010257, 97-0010351, and 97-010760 under section 58.007(e). Otherwise, the requestor has no right of access to those reports, and the department must withhold report numbers 97-010257, 97-0010351, and 97-010760 from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note a release of information made confidential by section 58.007(c) under the authority of section 58.007(e) would not constitute a disclosure of confidential information to the public for the purposes of section 552.352 of the Government Code or a selective disclosure of information to the public for the purposes of section 552.007. See Open Records Decision Nos. 680 at 7-8 (2003), 655 at 8-9 (1997). Cf. Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized, and receiving agency is not among statute's enumerated entities). We also note a statutory right of access prevails over the common-law. 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).

Section 552.101 of the Government Code also 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 satisfied. *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 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals' rights to privacy. Therefore, to the extent the department maintains any other responsive law enforcement records depicting the named individuals as suspects, arrestees, or criminal

defendants, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor 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. As noted, the requestor may represent 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* ORD 655 (discussing limitations on release of criminal history record information). Thus, if the requestor represents a criminal justice agency, she 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 represents a criminal justice agency and she intends to use the CHRI for a criminal justice purpose, then to the extent the department maintains any other responsive law enforcement records listing the named individuals as suspects, arrested persons, or criminal defendants, the department must make available to the requestor 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*, 297 S.W.3d at 415; *CenterPoint Energy*, 436 F.3d at 544; ORDs 613 at 4, 451. In that event, to the extent it exists, the department must withhold any remaining information at issue under section 552.101 of the

Government Code in conjunction with common-law privacy. However, if the department determines the requestor does not represent a criminal justice agency or does not intend to use the CHRI for a criminal justice purpose, to the extent the department maintains any other responsive law enforcement records listing the named individuals as suspects, arrested persons, or criminal defendants, 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 such records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the remaining information includes information in which the named individuals are not listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and, thus, does not implicate these individuals' rights to privacy. Accordingly, we will address your remaining argument for this information.

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

(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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find report number 88-00-9060 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003 (defining "child" for purposes of Fam. Code title 5), 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude report number 88-00-9060 is confidential under section 261.201(a) and must be

withheld on that basis under section 552.101 of the Government Code.<sup>2</sup> See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 state report numbers 91-001689, 93-004025, 96-012041, 01-009784, 01-009819, 04-012264, 06-000650, 06-002124, 06-006110, 06-006119, 08-003476, and 13-006740 pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic information, you may withhold report numbers 91-001689, 93-004025, 96-012041, 01-009784, 01-009819, 04-012264, 06-000650, 06-002124, 06-006110, 06-006119, 08-003476, and 13-006740 from disclosure based on section 552.108(a)(2) of the Government Code.

In summary, the department must withhold report numbers 97-010361 and 99-000950 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department is able to determine that the requestor represents a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right of access to report numbers 97-010257, 97-0010351, and 97-010760 under section 58.007(e). Otherwise, the requestor has no right of access to those reports, and the department must also withhold report numbers 97-010257, 97-0010351, and 97-010760 from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent the department maintains any other responsive law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor represents a criminal justice agency and she intends to use the CHRI for a criminal justice purpose, then to the extent the department maintains any other responsive law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the department must

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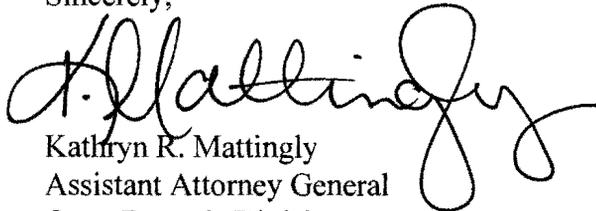
<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

make available to the requestor 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, and withhold any remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 88-00-9060 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, the department may withhold report numbers 91-001689, 93-004025, 96-012041, 01-009784, 01-009819, 04-012264, 06-000650, 06-002124, 06-006110, 06-006119, 08-003476, and 13-006740 from disclosure based on 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](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 510648

Enc. Submitted documents

c: Requestor  
(w/o enclosures)