



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2014

Ms. Lisa D. Mares
Counsel for City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-14317

Dear Ms. Mares:

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# 532898 (ORR #10-10676).

The McKinney Police Department (the "department") received a request for all arrest reports of a named individual, including a specified report. 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 the present request, in part, 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 has 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 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).

We note the requestor states in her request the requested information will be used for criminal justice purposes. Therefore, 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). To the extent it exists, the department must withhold any remaining information listing the named individual as a suspect, arrested person, or criminal defendant, 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 portion of the request 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 argument under section 552.101 of the Government Code for this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as 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 04-039009 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) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). You state the department has not adopted a rule that governs the release of this type of

information. Therefore, we find report number 04-039009 is generally confidential pursuant to section 261.201 of the Family Code.

However, as previously noted, the requestor is a representative of the probation office, a criminal justice agency, and as such, has a right of access to some of this otherwise protected information pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2). Section 261.201(a) provides that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes "applicable state law" in this instance. As noted above, the requestor is engaged in the administration of criminal justice for purposes of chapter 411 and intends to use the requested CHRI for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2). However, we are unable to determine whether the requestor intends to use the information for purposes consistent with the Family Code. Consequently, if the department determines the requestor does not intend to use the CHRI in report number 04-039009 for purposes consistent with the Family Code, then the department must withhold report number 04-039009 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute). However, if the department determines the requestor intends to use the CHRI in report number 04-039009 for purposes consistent with the Family Code, then the department must release the information at issue that is otherwise subject to section 261.201(a) of the Family Code and 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 instance, the department must withhold the remaining information in report number 04-039009 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

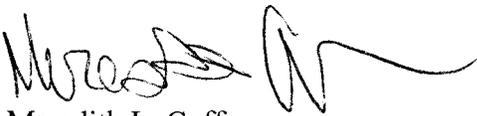
In summary, to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI from such records that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions and must withhold the remainder of those records under section 552.101 of the Government Code in conjunction with common-law privacy. If the department determines the requestor does not intend to use the CHRI in report number 04-039009 for purposes consistent with the Family Code, then the department must withhold report number 04-039009 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor intends to use the CHRI in report number 04-039009 for purposes consistent with the Family Code, the department must release the information in report number 04-039009 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 instance, the department must withhold the remaining information in report number 04-039009 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 532898

Enc. Submitted documents

c: Requestor
(w/o enclosures)