



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 11, 2016

Ms. Victoria D. Honey  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2016-05680

Dear Ms. Honey:

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# 601197 (Fort Worth Request No. W048053).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual, including information pertaining to six specified arrests. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information relating to five of the specified arrests. Thus, to the extent information pertaining to the remaining five arrests existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts "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

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<sup>1</sup>We understand you to raise section 552.130 of the Government Code based on your markings.

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 met. *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) (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.

This request, in part, requires the department to compile unspecified law enforcement records concerning the named individual. We find such a request for unspecified law enforcement records implicates the individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, other than for the arrests specified in the request, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the department has also submitted information pertaining to one of the specified arrests. Thus, this information is not part of a compilation of the named individual's criminal history, and it may not be withheld under section 552.101 of the Government Code on that basis. However, we will address your arguments against disclosure of this information.

We next address your argument under section 552.108 of the Government Code for report number 15-68333, as it potentially the most encompassing. Section 552.108(a)(1) of the Government Code exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 15-68333 pertains to a pending criminal investigation and prosecution, and release of the information would interfere with the investigation and prosecution. Based on your representation, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report number 15-168333.

Section 552.108, however, 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 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may generally withhold report number 15-68333 under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides 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). We note report number 15-68381 was used or developed in an investigation of alleged child abuse or neglect. Thus, we find report number 15-68381 is subject to section 261.201 of the Family Code. See *id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); see also *id.* § 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). 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 the department must generally withhold report number 15-68381 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>3</sup> See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

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

<sup>3</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state the basic information you marked in report number 15-68333 reveals the identities of undercover officers. You state release of this information would jeopardize the safety of the undercover officers and subject the officers to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the department must withhold the information you have marked under section 552.152 of the Government Code.

However, the requestor is a representative of the Probation and Pretrial Service Office (the "probation office") of the United States District Court for the Northern District of Texas. 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." Gov't Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing DPS shall grant criminal justice agencies access to CHRI). 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 or Subchapter E-1 to obtain from the [DPS CHRI] maintained by the [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 information at issue may contain CHRI. 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 CHRI). Section 411.082 defines a "criminal justice agency" as including "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). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Crim. Proc. Code art. 60.01(1).

We conclude the probation office is engaged in the administration of criminal justice for purposes of chapter 411. We understand the requestor is requesting the information at issue for a criminal justice purpose because the requestor states the named individual is under investigation by the probation office. Therefore, 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).

Accordingly, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must make available to the requestor the CHRI from those records and report number 15-68333 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. Further, with the exception of basic information, which must be released, the department may withhold the remainder of report number 15-68333 under section 552.108(a)(1) of the Government Code. However, in releasing basic information from report number 15-68333, the department must withhold the information you have marked under section 552.152 of the Government Code.

We also note the requestor, as a representative of the probation office, may have a right of access to report number 15-68381, which is subject to section 261.201 of the Family Code. Information subject to section 261.201 may be disclosed only for purposes consistent with the Family Code and applicable federal or state law. Chapter 4111 of the Government Code is such an applicable state law. Although the requestor is a representative of a criminal justice agency and intends to use the information for a criminal justice purpose, we are unable to determine whether the release of the information in this instance would be for

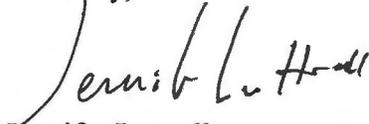
purposes consistent with the Family Code. Accordingly, we must rule conditionally. If the department determines the release of the CHRI is for purposes consistent with the Family Code, we conclude the department must make available to the requestor the CHRI from report number 15-68381 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See* 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, the department must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines the release of the CHRI is not consistent with the Family Code, then the department must withhold report number 15-68381 in its entirety 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 law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must make available to the requestor the CHRI from those records and report number 15-68333. 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. Further, with the exception of basic information, which must be released, the department may withhold the remainder of report number 15-68333 under section 552.108(a)(1) of the Government Code. However, in releasing basic information from report number 15-68333, the department must withhold the information you have marked under section 552.152 of the Government Code. If the department determines the release of the CHRI is for purposes consistent with the Family Code, we conclude the department must make available to the requestor the CHRI from report number 15-68381. In that event, the department must withhold the remaining information in report number 15-68381 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the release of the CHRI from report number 15-68381 is not consistent with the Family Code, then the department must withhold report number 15-68381 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 (a) 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](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,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and a stylized "L".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 601197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)