



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2016

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

OR2016-23542

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# 630942 (A16-001073).

The College Station Police Department (the "department") received a request for information pertaining to a named individual. The department states it has released some information. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception the department claims 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 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) (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. Upon review, we find the present request requires the department to compile unspecified law enforcement records concerning the named individual. Accordingly, we find the request implicates the named 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, the department must generally withhold such information under section 552.101 in conjunction with common-law privacy.

However, we note the requestor states she is conducting a court-ordered social study. Accordingly, the requestor may have a right of access to portions of the requested information pursuant to section 411.1285 of the Government Code. Section 411.1285(a) of the Government Code provides, in part, that "[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [{"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, 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:

(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.

Gov't Code § 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). However, a domestic relations office may only receive CHRI 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(a); see also Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

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).

As noted above, the requestor states she is conducting a court-ordered social study. *See* Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Thus, to the extent the department determines the requestor represents a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, and the department maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must release information that shows identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions, and must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. *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). However, if the department determines the requestor does not represent a domestic relations office created under chapter 203 of the Family Code that is providing services to a person who is a party to a proceeding under chapter 203 of the Family Code, then, to the extent the department maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant; thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 on that basis. Therefore, we will consider your arguments against disclosure of this information.

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.* §§ 552.108(a)(2), .301(e)(1)(A). The department states the information it has indicated pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue. Thus, the department may withhold the information you have indicated under section 552.108(a)(2) of the Government Code.²

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 generally withhold any such information under section 552.101 of the Government Code in conjunction

²As our ruling is dispositive, we do not address your other argument to withhold this information

with common-law privacy; however, if the department determines the requestor represents a domestic relations office created under chapter 203 of the Family Code that is providing services to party to a proceeding under chapter 203 of the Family Code, then the department must release any CHRI, to the extent it exists, to the requestor. The department may withhold the information you have indicated 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bhf

Ref: ID# 630942

Enc. Submitted documents

c: Requestor
(w/o enclosures)