



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Ms. Delietrice Henry  
Open Records Assistant  
The City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2015-26070

Dear Ms. Henry:

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# 590487 (ORR #ROBA091515).

The Plano Police Department (the "department") received a request for all records involving four named individuals. You state you have released some information to the requestor. You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

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 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 requires the department to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Thus, to the extent the department maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, 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 states he is conducting a court-ordered social study. Accordingly, the requestor may have a right of access to portions of the information at issue 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."<sup>1</sup> 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).

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<sup>1</sup>A "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 he is conducting a court-ordered social study regarding the individuals named in the request. *See* Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Thus, if the department determines the information at issue relates to a person who is a party to a proceeding in which the requestor is providing services pursuant to chapter 203 of the Family Code, we find the requestor has a right of access under section 411.1285 to any CHRI pertaining to that person contained in the information at issue. We note the requestor's statutory right of access prevails over the doctrine of 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); *see also 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). Therefore, if the department determines the information at issue relates to a person who is a party to a proceeding in which the requestor is providing services pursuant to chapter 203 of the Family Code, then, pursuant to section 411.1285(a), to the extent the department maintains any law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the department must make available to the requestor any information pertaining to that person that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, 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. However, if the department determines the information at issue does not relate to a person who is a party to a proceeding in which the requestor is providing services pursuant to chapter 203 of the Family Code, then, to the extent it exists, the department must withhold any information depicting any of the named individuals as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. You also raise section 552.101 in conjunction with constitutional privacy for the information at issue. Under the Supremacy Clause of the United States Constitution, the United States Constitution and duly-enacted federal statutes are “the supreme law of the Land,” and states have a responsibility to enforce federal law. *See* U.S. Const., art VI, cl. 2; *Howlett v. Rose*, 496 U.S. 356, 367-69 (1990). As a federal law, constitutional privacy preempts any conflicting state provisions, including section 411.087 of the Government Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Thus, we will address your argument under section 552.101 in conjunction with constitutional privacy for any CHRI to which the requestor may have a right of access.

Section 552.101 of the Government Code also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern.

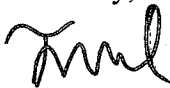
*Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985)). Upon review, we find no portion of any CHRI falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any CHRI the requestor has a right of access to under section 552.101 of the Government Code on the basis of constitutional privacy.

In summary, if the department determines the information at issue relates to a person who is a party to a proceeding in which the requestor is providing services pursuant to chapter 203 of the Family Code, then, pursuant to section 411.1285(a), to the extent the department maintains any law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the department must make available to the requestor any information pertaining to that person that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, 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. However, if the department determines the information at issue does not relate to a person who is a party to a proceeding in which the requestor is providing services pursuant to chapter 203 of the Family Code, then, to the extent it exists, the department must withhold any information depicting any of the named individuals as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 590487

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

