



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 13, 2017

Ms. Lynn M. Winter  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102-6311

OR2017-05184

Dear Ms. Winter:

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# 648638 (City PIR No. W057754).

The Fort Worth Police Department (the "department") received a request for all police reports pertaining to a named individual including two specified reports. You state you have released some information. 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 of the Government Code encompasses information protected by other statutes such as section 261.201 of the Family Code, which provides as follows:

- (a) [T]he 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). We find Exhibits C-5, C-7, and C-12 were used or developed in investigations by the department of suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.2001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Thus, the information at issue is within the scope of section 261.201(a). Accordingly, we find the information at issue is generally confidential under section 261.201(a). However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We note some of the information at issue is also subject to section 58.007 of the Family Code, which constitutes applicable state law for purposes of section 261.201(a). Accordingly, we will address the applicability of section 58.007 to the information at issue, as well as the remaining information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007 reads as follows:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

*Id.* § 58.007(c), (e). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007(c), “child” means a person who is 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 the information in Exhibits C-6, C-7, C-8, C-9, C-10, C-11, and C-12 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, this information is generally confidential pursuant to section 58.007(c) of the Family Code. Upon review, we find Exhibits C-1, C-2, C-3, C-4 and C-5 do not identify a juvenile suspect or offender for purposes of section 58.007. Accordingly, the department may not withhold Exhibits C-1, C-2, C-3, C-4 and C-5 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In this instance, however, the requestor is a representative of the Probation Office of the United States District Court for the District of Wyoming (the “probation office”), and section 58.007(e) gives a “criminal justice agency as . . . defined by Section 411.082, Government Code” a right of access to juvenile law enforcement records. *Id.* § 58.007(e). Section 411.082 of the Government Code 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). We understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* Therefore, the requestor generally has a right of access to some of the information at issue under section 58.007(e) of the Family Code, and this information may not be withheld under section 552.101 in conjunction with section 58.007(c). Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for this information, we note a statutory right of access prevails over the common-law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *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). Thus, the department may not withhold Exhibits C-6, C-7, C-8, C-9, C-10, C-11, and C-12 from this requestor under section 552.101 in conjunction with common-law privacy. As noted above, C-7 and C-12 are also subject to section 261.201(a) of the Family Code. Records subject to

section 261.201 may be disclosed under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). Section 58.007(e) is applicable state law allowing disclosure to the probation office. However, the department must determine whether releasing Exhibits C-7 and C-12 to the probation office is consistent with the Family Code. If the department determines the probation office does not intend to use Exhibits C-7 and C-12 for purposes consistent with the Family Code, then the department must withhold this information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). If the department determines the probation office intends to use Exhibits C-7 and C-12 for purposes consistent with the Family Code, then the requestor has a right of access to Exhibits C-7 and C-12 in their entireties pursuant to section 58.007(e) of the Family Code, and the department must release this information to the requestor. In any event, the requestor has a right of access to Exhibits C-6, C-8, C-9, C-10, and C-11 under section 58.007(e), and the department may not withhold this information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Next, we consider the requestor's access to Exhibit C-5 that is subject to section 261.201 only. As noted above, 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. Section 411.089(a) of the Government Code provides that "[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). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

(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 contains CHRI.

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 CHRI). Thus, to the extent the requestor in this instance represents a “criminal justice agency,” she is authorized to obtain CHRI from Exhibit C-5 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(b).

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.” *Id.* § 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, 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).*

The department acknowledges the requestor is a representative of a criminal justice agency and intends to use the information for criminal justice purposes. However, we are unable to determine whether the requestor intends to use Exhibit C-5 for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then the department must release the information 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 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Although the department raises common-law privacy for the information at issue, as previously mentioned, a statutory right of access prevails over the common-law. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint*, 436 F.3d at 544. If the department determines the requestor does not intend to use Exhibit C-5 for purposes consistent with the Family Code, then the department must withhold Exhibit C-5 in its entirety pursuant to section 552.101 in conjunction with section 261.201(a). *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

The department contends the remaining requested information at issue is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses 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. 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, in part, seeks all reports pertaining to a named individual. This portion of the request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individual 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 as a compilation of criminal history. However, we note the requestor also seeks a specified incident report. This aspect of the request does not implicate the named individual's right to privacy, and the department may not withhold the specified incident report under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual's criminal history.

We note, however, the requestor, as a representative of the probation office, may have a right of access to CHRI in this information pursuant to chapter 411 of the Government Code. As noted above, the requestor represents a criminal justice agency and intends to use any CHRI for a criminal justice purpose. Accordingly, to the extent the department maintains unspecified law enforcement records, other than the specified report listing the named individual as a suspect, arrestee, or criminal defendant, the department must make CHRI available to the requestor pursuant to chapter 411 of the Government Code. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint*, 436 F.3d at 544. To the extent it exists, the department must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of criminal history.

Portions of the remaining information are protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public

employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>1</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Thus, the department must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> Gov't Code § 552.130. Upon review, we find the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the department determines the probation office intends to use Exhibits C-7 and C-12 for purposes consistent with the Family Code, then the department must release Exhibits C-7 and C-12 to the requestor pursuant to section 58.007(e) of the Family Code. Otherwise, the department must withhold Exhibits C-7 and C-12 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must release Exhibits C-6, C-8, C-9, C-10, and C-11 to the requestor pursuant to section 58.007(e) of the Family Code. If the department determines the probation offices intends to use Exhibit C-5 for purposes consistent with the Family Code, then the department must release the CHRI and withhold the remainder under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Otherwise, the department must withhold Exhibit C-5 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the department maintains further 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 pursuant to section 411.087(a)(2) of the Government Code. 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. The department must

---

<sup>1</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</sup>

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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/eb

Ref: ID# 648638

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>We note the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office. We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).