



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2017

Ms. Leslie A. Whitten
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2017-05596

Dear Ms. Whitten:

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# 652293 (ORR Nos. A17-000106, A17-000176).

The College Station Police Department (the "department") received a request for information pertaining to three named individuals (the "first requestor"). The department then received a second request from two individuals asking for information about themselves (the "second requestors"). The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the second request for information because it does not pertain to either of the second requestors. Thus, the department is not required to release this information to the second requestors, which we have marked, in response to the second request.

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 (1) contains highly intimate or embarrassing fact, 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 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.

The first requestor has provided signed release forms of the individuals named in her request. Thus, the first requestor has a right of access to the private information pertaining to these individuals pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); *Open Records Decision No. 481* at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Similarly, the second requestors only seek information pertaining to themselves, to which they also have a right of access under section 552.023. Therefore, the department may not withhold any of the information responsive to each of the requests under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the criminal history of any of the named individuals.

Section 552.108(a)(2) of the Government Code exempts 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 information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), 301(e)(1)(A). The department states the information it has marked under section 552.108(a)(2) pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See Open Records Decision No. 127* at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic

information, the department may generally withhold the information it has marked under section 552.108(a)(2) of the Government Code.¹

However, the first requestor may have a right of access to portions of the information at issue pursuant to section 411.1285(a) of the Government Code, which reads

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 involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation.

Gov’t Code § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices); *id.* § 203.001(2) (defining “domestic relations office” as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.”). In addition, section 411.087(a)(2) of the Government Code provides,

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or subchapter E-1 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.

Gov’t Code § 411.087(a)(2). 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 receive CHRI only if the information relates to a person involved in a child custody evaluation under Chapter 107 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

The first requestor has submitted documentation demonstrating she has been appointed by the Brazos County District Courts to complete a child custody evaluation. *See* Fam. Code § 107.103 (court ordered child custody evaluation must be performed by individual qualified under Fam. Code § 107.104); *see also id.* § 107.104(b)(3) (individual employed by or under

¹We note some of the basic information contains arrestees’ social security numbers. *See* ORD 127 at 4. 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. Gov’t Code § 552.147(b).

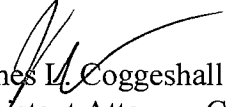
contract with domestic relations office is qualified to conduct child custody evaluation). Although the department seeks to withhold the information at issue under section 552.108 of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, if the department determines the CHRI within the reports marked under section 552.108(a)(2) relates to a person involved in a child custody evaluation under Chapter 107 of the Family Code, then the department must release to the first requestor that CHRI pursuant to section 411.1285(a). However, if the department determines the CHRI at issue does not relate to a person involved in a child custody evaluation under Chapter 107 of the Family Code, then the department is not required to release that CHRI to the first requestor on that ground.

To conclude, with the exception of basic information, which the department must release, the department may withhold the information it has marked under section 552.108(a)(2) of the Government Code. However, if the department determines the CHRI within the reports marked under section 552.108(a)(2) relates to a person involved in a child custody evaluation under Chapter 107 of the Family Code, then the department must release that CHRI to the first requestor pursuant to section 411.1285(a) of the Government Code. The department must release the remaining information to the first requestor. Because each requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 652293

Enc. Submitted documents

c: Requestor
(w/o enclosures)