



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 20, 2017

Ms. Amy L. Sims
Deputy City Attorney
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457

OR2017-05681

Dear Ms. Sims:

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# 649590 (File No. 1509).

The City of Lubbock (the "city") received a request for any and all reports, complaints, citations, arrest warrants, and affidavits pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 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) (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 present request seeks all reports pertaining to a named individual. This request requires the city to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the individual and may not be withheld as a compilation of criminal history.

In this instance, we note the requestor is a representative of the United States Army (the "Army") and may have a right of access to criminal history record information about the named individual related to this otherwise protected information. Section 411.089(a) of the Government Code provides "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the department 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 [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). We note "criminal history record information" 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). A criminal justice agency that receives criminal history record information 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 criminal history record information).

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). “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 criminal history record information.” Crim. Proc. Code art. 60.01(1).

The requestor is trial counsel with the Army responsible for prosecuting the case and is requesting information pertaining to criminal violations concerning the named individual under her division’s command. Upon review, we find the requestor represents a criminal justice agency that is engaged in the administration of criminal justice under chapter 411 and intends to use the criminal history record information of the named individual for a criminal justice purpose. Accordingly, pursuant to section 411.087(a)(2), to the extent the city maintains unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the city must make available to the requestor the criminal history record information about the named individual from those records. *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). Further, although the city claims some of this information, to the extent it exists, is excepted from disclosure under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See, e.g.*, Open Records Decisions Nos. 613 at 4 (1993), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). To the extent it exists, the city 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.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides:

(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.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and younger than seventeen at the time of the conduct. *See id.* § 51.02(2). Report number 16-28664 involves a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Upon review, we find the exceptions in section 58.007 do not apply to report number 16-28664 in this instance.¹ *See id.* § 58.007(e)-(i). Therefore, the city must withhold report number 16-28664 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, to the extent the city maintains unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the city must make available to the requestor the criminal history record information about the named individual from those records and must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold report number 16-28664 under section 552.101 of the Government Code in conjunction with section 58.007(c) 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.

¹We note, because report number 16-28664 does not contain criminal history record information (“CHRI”) of the individual named in the request for information, we do not address whether the requestor has a right of access to CHRI under section 411.087(a)(2) of the Government Code. *See Gov’t Code* § 411.087(a)(2); *see also id.* § 411.089.

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,

A handwritten signature in cursive script that reads "D. Michelle Case". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

Ref: ID# 649590

Enc. Submitted documents

c: Requestor
(w/o enclosures)