



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2017

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2017-18156

Dear Mr. Murray:

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# 671170 (ORR# W062124).

The City of Fort Worth (the "city") received a request for any reports during a specified time period related to two named individuals. The city states it has released some information to the requestor. The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the city 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."¹ Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

The present request seeks unspecified law enforcement records pertaining to two named individuals. This request requires the city to compile the named individuals' criminal histories and implicates the privacy of the named individuals. Therefore, to the extent the city maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the city must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestor is an investigator with the Texas Department of Family and Protective Services ("DFPS"). Section 411.114(a) of the Government Code states, in pertinent part:

(2) The [DFPS] shall obtain from the [Department of Public Safety ("DPS")] criminal history record information ["CHRI"] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report the [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, the [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3)[.]

Gov't Code § 411.114(a)(2)(I), (4)(B). CHRI consists of "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." *Id.* § 411.082(2). Thus, this requestor has a right of access under section 411.114 to CHRI in information held by the city if it involves an alleged perpetrator in a report of abuse or neglect of a child, an elderly person, or a person with a disability.

In this instance, the DFPS investigator does not state the named individuals are the alleged perpetrators in a report of abuse or neglect of a child, an elderly person, or a person with a disability, but only requests information about the named individuals. Therefore, to the extent the named individuals are alleged perpetrators in a report of abuse or neglect of a child, an elderly person, or a person with a disability that was reported to DFPS, the city must release the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from any responsive information depicting the named individuals as suspects, arrestees, or criminal defendants, to the extent it exists. *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). We note a specific statutory right of access prevails over general exceptions to disclosure under the Act, such as section 552.108 of the Government Code. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). 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 depicting the named individuals as suspects, arrestees, or criminal defendants under section 552.101 in conjunction with common-law privacy. However, to the extent the named individuals are not alleged perpetrators in a report of abuse or neglect of a child, an elderly person, or a person with a disability that was reported to DFPS, then, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the city has submitted information that does not list either named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individuals' criminal histories, and the city may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that

basis. Accordingly, we will address the city's argument under section 552.108 of the Government Code against disclosure of this information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states report number 17-42184 pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report number 17-42184.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold report number 17-42184 under section 552.108(a)(1) of the Government Code.

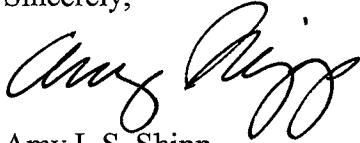
In summary, to the extent the city maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the city must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy; however, if the named individuals are the alleged perpetrators in a report of abuse or neglect of a child, an elderly person, or a person with a disability, then the city must release CHRI pertaining to the named individuals from any such information. With the exception of the basic information, which must be released, the city may withhold report number 17-42184 under section 552.108(a)(1) 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,

A handwritten signature in black ink, appearing to read "Amy Shipp". The signature is fluid and cursive, with the first name "Amy" and the last name "Shipp" clearly distinguishable.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/sb

Ref: ID# 671170

Enc. Submitted documents

c: Requestor
(w/o enclosures)