



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2017

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2017-18816

Dear Ms. Sheely:

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# 672011.

The Travis County District Attorney's Office (the "district attorney's office") received a request for all documents relating to any prosecutions of a named individual. The district attorney's office claims the requested 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.

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 information protected by other statutes, including section 261.201 of the Family Code. Section 261.201(a) provides as follows:

[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). Upon review, we find case number 80-1112 consists of information that was used or developed in an investigation under chapter 261, so as to fall within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). The district attorney’s office does not indicate it has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we find case number 80-1112 is generally confidential pursuant to section 261.201 of the Family Code.

However, we note the requestor is a representative of the Office of Capital and Forensic Writs (the “OCFW”). 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.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1272 of the Government Code provides:

The [OCFW] and a public defender’s office are entitled to obtain from the [Department of Public Safety (“DPS”)] criminal history record information maintained by the [DPS] that relates to a criminal case in which an attorney compensated by the office of capital and forensic writs . . . has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] criminal history record information maintained by the [DPS] 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). “Criminal history record information” (“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). We note case number 80-1112 contains CHRI of the named individual. Accordingly, the requestor is authorized to obtain the CHRI in the information at issue from the district attorney’s office pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the OCFW is appointed, but only for purposes consistent with the Family Code. *See id.* §§ 411.087(a)(2), .1272; *see also* Fam. Code § 261.201(a).

We are unable to determine whether the requestor intends to use the CHRI of the named individual in case number 80-1112 for purposes consistent with the Family Code. Therefore, if the district attorney’s office determines case number 80-1112 relates to a criminal case in which an attorney compensated by the OCFW is appointed, and the district attorney’s office determines the requestor intends to use the CHRI in case number 80-1112 for purposes consistent with the Family Code, then the district attorney’s office must (1) release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to the requestor and (2) withhold any remaining information in case number 80-1112 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Although the district attorney’s office raises section 552.108 of the Government Code for this information, we note a specific statutory right of access prevails over general exception to disclosure under the Act. *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). Further, although the district attorney’s office raises section 552.101 of the Government Code in conjunction with common-law privacy for this information, we also note a specific statutory right of access overcomes the common law. *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. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). If the district attorney’s office determines the information at issue does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, or the district attorney’s office determines the requestor does not intend to use the CHRI in case number 80-1112 for purposes consistent with the Family Code, then the district attorney’s office must withhold case number 80-1112 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *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).

¹As we are able to make this determination, we need not address the remaining arguments of the district attorney’s office for this information.

Section 552.101 of the Government Code 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.

In this instance, the request seeks unspecified law enforcement records concerning the individual named in the request. This request implicates the named individual's right to privacy. Therefore, to the extent the district attorney's office maintains law enforcement records, other than case number 80-1112, depicting the named individual as a suspect, arrestee, or criminal defendant, the district attorney's office must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, as previously noted, the requestor is a representative of the OCFW and is authorized to obtain the CHRI in the information at issue, to the extent it exists, from the district attorney's office pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the OCFW is appointed. *See* Gov't Code §§ 411.087(a)(2), .1272. As previously discussed, although the district attorney's office raises section 552.108 of the Government Code for this information, a specific statutory right of access prevails over general exception to disclosure under the Act. *See, e.g.*, ORDs 613 at 4, 451. Further, although the district attorney's office raises section 552.101 of the Government Code in conjunction with common-law privacy for this information, a specific statutory right of access overcomes the common law. *See Collins*, 297 S.W.3d at 415; *CenterPoint*, 436 F.3d at 544. Therefore, to the extent the district attorney's office maintains law enforcement records, other than case number 80-1112, depicting the named individual as a suspect, arrestee, or criminal defendant, and if the district attorney's office determines the information at issue relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the district attorney's office must (1) release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to the requestor and (2) withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, if the district attorney's office determines the information at issue does not relate to a criminal case in which an attorney compensated by the OCFW

is appointed, then, to the extent the district attorney's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the district attorney's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.²

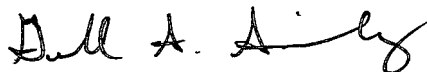
In summary, if the district attorney's office determines case number 80-1112 relates to a criminal case in which an attorney compensated by the OCFW is appointed, and the district attorney's office determines the requestor intends to use the CHRI in case number 80-1112 for purposes consistent with the Family Code, then the district attorney's office must (1) release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to the requestor and (2) withhold any remaining information in case number 80-1112 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the district attorney's office determines the information at issue does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, or the district attorney's office determines the requestor does not intend to use the CHRI in case number 80-1112 for purposes consistent with the Family Code, then the district attorney's office must withhold case number 80-1112 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 district attorney's office maintains law enforcement records, other than case number 80-1112, depicting the named individual as a suspect, arrestee, or criminal defendant, and if the district attorney's office determines the information at issue relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the district attorney's office must (1) release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to the requestor and (2) withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, if the district attorney's office determines the information at issue does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then, to the extent the district attorney's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the district attorney's office must withhold such information 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.

²As we are able to make this determination, we need not address the remaining arguments of the district attorney's office for this information.

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 "Gerald A. Arismendez". The signature is fluid and cursive, with the first name "Gerald" and last name "Arismendez" clearly distinguishable.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 672011

Enc. Submitted documents

c: Requestor
(w/o enclosures)