



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2017

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-22743

Dear Mr. Kopp:

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# 678872 (COSA File No. W176956).

The San Antonio Police Department (the "department") received a request for all records pertaining to two named individuals, to exclude a specified report. The department states it will redact certain information under sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code.¹ The department further states it will redact public citizens' dates of birth pursuant to Open Records Letter No. 2016-08566 (2016).² The department claims the

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). 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. *Id.* § 552.147(b).

²Open Records Letter No. 2016-08566 authorizes the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department 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.” 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 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 department to compile the named individuals’ criminal histories and implicates the privacy of the named individuals. Therefore, to the extent the department maintains law enforcement records listing either of the named individuals 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.

However, as a representative of the Texas Military Department, we understand the requestor is also a representative of the adjutant general of the Texas military forces and has a right of access to some of the information at issue. Section 411.121(b)(1) of the Government Code provides, “[t]he adjutant general is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by [DPS] that relates to a person who is: (1) a member of the Texas military forces[.]” Gov’t Code § 411.121(b)(1). *See also id.* §437.001(2) (“[a]djutant general’ means the military commander of the Texas military forces.”), (13) (“‘Texas Military Department’ means the state agency charged with administrative activities in support of the Texas military forces.”), (14) (“‘Texas military forces’ means the Texas National Guard, the Texas State Guard, and any other military force organized under state law.”) (15) (“‘Texas National Guard’ means the Texas Army National Guard and the Texas Air National Guard.”). In addition, section 411.087(a)(2) of the Government Code reads as follows:

- (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). 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). The requestor states he is seeking information about two members of the Texas Army National Guard. Thus, the requestor is authorized to obtain the submitted CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(1) of the Government Code. *See id.* § 411.087(a)(2), .121(b)(1)[.] A specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See 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 exceptions to disclosure under the Act).* Further, 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). Consequently, to the extent the department maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the department must release any CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(1) of the Government Code and withhold the remainder of any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the department 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 department 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 department’s argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.218 of the Health and Safety Code is applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See Open Records Decision No. 649 (1996).* This section makes the originating telephone

numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. The department states the City of San Antonio is part of an emergency communication district established under section 772.218 of the Health and Safety Code. The department indicates the information it marked contains an originating telephone number of a 9-1-1 caller. Provided the information at issue was furnished by a service supplier, we agree the department must withhold the telephone number it marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, if the telephone number at issue does not consist of the originating telephone number provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.218.

In summary, to the extent the department maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the department must release any CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(1) of the Government Code and withhold the remainder of any such information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue was furnished by a service supplier, we agree the department must withhold the telephone number it marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The department must release the remaining information.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/tdw

Ref: ID# 678872

Enc. Submitted documents

c: Requestor
(w/o enclosures)