



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2017

Ms. Celeste Baltierra
Attorney
City of Corpus Christi
P O Box 9277
Corpus Christi, Texas 78469-9277

OR2017-26076

Dear Ms. Baltierra:

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# 684569 (PIR No. EMun1).

The Corpus Christi Police Department (the "department") received a request for all information pertaining to a specified address involving two named individuals. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim.

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 common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, 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 met. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing

¹We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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.

In this instance, the requestor asks for information concerning all incidents involving the named persons during a specified time. This request requires the department to compile unspecified police records concerning the named individuals, thus implicating such individuals' rights to privacy. Therefore, to the extent the department maintains any law enforcement records depicting 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, the requestor in this instance is with the Housing Authority of Corpus Christi (the "housing authority"). The Department of Public Safety ("DPS") is required to provide criminal history record information ("CHRI") to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). 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). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. ORD 655 at 4. The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides, "Notwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). Thus, to the extent the requestor is seeking CHRI regarding applicants or tenants of public housing, the housing authority is authorized to receive CHRI from the DPS. Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). Accordingly, the housing authority is also authorized to receive CHRI from a local criminal justice agency, such as the department. *See* ORD 655; *see also* Gov't Code §§ 411.083(b)(2), .087(a).

However, federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides (1) public housing agencies may receive CHRI for adult

applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). In this instance, we are unable to determine if the requestor is seeking the release of CHRI of applicants or tenants for purposes of applicant screening, lease enforcement, or eviction. Consequently, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant and the department determines the requestor intends to use the CHRI of an applicant or tenant of public housing for purposes of applicant screening, lease enforcement, or eviction, we conclude the department must release information regarding the named individuals to this requestor that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions. To the extent they exist, the department must withhold the remainder of the records at issue from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. See *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006). However, if the department determines the information at issue does not pertain to an applicant or tenant of public housing or the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, it must withhold any 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.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 684569

Enc. Submitted documents

c: Requestor
(w/o enclosures)