



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

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OR2017-26220

Dear Mr. Page:

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# 684460.

The Euless Police Department (the "department"), which you represent, received a request for information pertaining to a named individual, including a specified incident report. The department 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 the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing fact, 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 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 requestor asks, in part, for unspecified information held by the department concerning a named individual. Therefore, to the extent the department maintains unspecified law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. However, the requestor may be an authorized representative of the named individual. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. We note the requestor is a recruiter for the United States Army (the "Army"). We have no indication the named individual provided the Army with a signed authorization for the release of the information at issue. Accordingly, if the named individual did not provide the Army with a signed authorization for the release of the information at issue, the requestor is not an authorized representative of the named individual, and, to the extent the department maintains unspecified law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. If the individual under investigation provided the Army with a signed authorization for the release of the information at issue, the requestor is an authorized representative of the named individual for purposes of section 552.023, and the department may not withhold any unspecified law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, to the extent it exists, under common-law privacy. In that situation, we will address the applicability of the raised exception to the information at issue. Nevertheless, we note the requestor also asks for information pertaining to incident report number 1600027852. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history. Therefore, this information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which 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 incident report number 1600027852 was used or developed in an investigation by the department under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the department must generally withhold incident report number 1600027852 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Next, we note the information at issue contains a court-filed document that is subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov’t Code § 552.022(a)(17). Section 552.108 is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022(a)(17) under section 552.108.

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: (1) 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

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<sup>1</sup>As our ruling is dispositive, we do not address the arguments of the department to withhold this information.

information at issue 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, 710 (Tex. 1977). The department states some of the requested information relates to pending criminal investigations. Based on this representation, we conclude the release of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is applicable to this requested information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department asserts the remaining requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the information subject to section 552.022(a)(17), and basic information, which the department must release, to extent such information exists, the department may generally withhold the requested information it indicated under section 552.108(a)(1) of the Government Code and the remaining requested information it indicated under section 552.108(a)(2) of the Government Code.

As previously noted, the requestor is a recruiter for the Army and is, therefore, authorized to perform background investigations of persons seeking acceptance or retention in the armed services. *See* 5 U.S.C. § 9101(b)(1)(A)(iii); *see also id.* § 9101 (a)(6)(A) (the United States Department of Defense is a covered agency for purposes of section 9101). The requestor has a right to the criminal history record information (“CHRI”) of state and local criminal justice agencies when the requestor receives the consent of the individual being investigated for release of such information. *See id.* § 9101 (b)(1), (c); *see also* 10 U.S.C. § 111 (b)(7) (DoD includes the Department of the Army). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or

locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

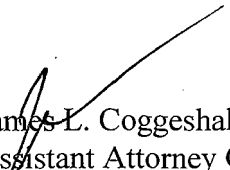
Federal law provides the Army’s right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101 (b)(4) (section 9101 “shall apply notwithstanding any other provision of law . . . of any State”). Thus, the Army’s right of access under federal law preempts section 261.201 of the Family Code, as well as section 552.108 of the Government Code. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Army’s right of access is contingent on the request being made for eligibility or retention purposes, and on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c). It is unclear if the named individual is seeking acceptance or retention in the armed services and if the request is for eligibility or retention purposes. Further, we have no indication the individual under investigation provided the Army with a signed authorization for the release of the information at issue. Nevertheless, if the request was for eligibility or retention purposes and the Army provides a signed written consent for release from the individual being investigated, then the department must release CHRI from incident report number 1600027852 as well as from any information subject to section 552.108(a)(1) or 552.108(a)(2). If the request was not made for eligibility or retention purposes, or if the Army does not provide a written consent for release, then the department may not release CHRI on that ground.

In summary, to the extent the department maintains any unspecified law enforcement information depicting the named individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, to the extent the requestor is not an authorized representative of the named individual. However, if the requestor is an authorized representative of the named individual, then, to the extent it exists, with the exception of CHRI to which the requestor may have a right of access under federal law, the information subject to section 552.022(a)(17) of the Government Code, and basic information, which the department must release, the department may withhold the requested information it indicated under section 552.108(a)(1) of the Government Code and the requested information it indicated under section 552.108(a)(2) of the Government Code. With the exception of CHRI to which the requestor may have a right of access under federal law, the department must withhold incident report number 1600027852 under section 552.101 of the Government Code in conjunction with section 261.201(a) 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.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tdw

Ref: ID# 684460

Enc. Submitted documents

c: Requestor  
(w/o enclosures)