



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Ms. Teresa L. Presley
Records Manager
City of Frisco
7200 Stonebrook Parkway
Frisco, Texas 75034

OR2019-10461

Dear Ms. Presley:

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# 760404 (ORR# P031769-012919).

The City of Frisco (the "city") received a request for information pertaining to a specified investigation and named individuals. The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. Upon review, we find some of the information at issue to be highly intimate or embarrassing and not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the requested information must be withheld to protect the individual's privacy.

Withholding only the identity of the individual whose information is at issue or certain details of the submitted information from this requestor would not preserve the common-law right of privacy of the individual at issue. Accordingly, to protect the privacy of the individual to whom the information relates, the submitted information is generally confidential in its entirety under common-law privacy.

However, the requestor is an investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114 of the Government Code allows, among other things, for DFPS to obtain criminal history record information (“CHRI”) concerning an individual who is the subject of a report of abuse or neglect of a child. *See* Gov’t Code § 411.114(a)(4), (a)(2)(I). 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.” *See id.* § 411.082(2).

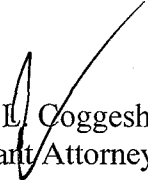
The requestor does not state whether any of the individuals who are the subject of the submitted information is a suspect in a report of abuse or neglect of a child. Therefore, we must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). We note a statutory right of access prevails over a claim under common-law privacy. *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); *see also 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). Accordingly, if any of the individuals to whom the information at issue pertains is a suspect in a report of abuse or neglect of a child, then the city must release the CHRI pertaining to that individual, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if none of the individuals at issue is a suspect in a report of abuse or neglect of a child, then the city must withhold the submitted information in its entirety 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 760404

Enc. Submitted documents

c: Requestor
(w/o enclosures)