



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 5, 2020

Mr. Thomas Royce Hansen  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102-6311

OR2020-06903

Dear Mr. Hansen:

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# 815944 (PIR No. W095462).

The City of Fort Worth (the "city") received a request for police reports involving two named individuals at a specified address during a specified time period. The city claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the city claims.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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.

The present request seeks all reports pertaining to two named individuals. This request requires the city to compile the named individuals' criminal histories and implicates each

named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the city must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor is a representative of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114(a) of the Government Code states in pertinent part:

(2) The [DFPS] shall obtain from the [Department of Public Safety ("DPS")] criminal history record information ["CHRI"] maintained by [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, 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). Thus, these provisions may grant the DFPS investigator a right of access to CHRI in the information at issue, to the extent it exists. We note a statutory right of access prevails over a claim under common-law privacy, as well as the general exceptions under the Act. *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); Open Records Decision No. 451 (1986)

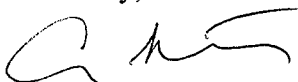
(specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

The requestor does not specifically state whether either of the subjects of the requested information is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the requested information, and we must rule conditionally. Therefore, if neither subject at issue in the requested information is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the city is not required to release the CHRI pursuant to section 411.114 and must withhold the requested information, to the extent it exists, under section 552.101 of the Government Code in conjunction with common-law privacy. However, if either subject at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the requestor is generally authorized by section 411.114 of the Government Code to obtain CHRI from the city regarding that individual and must withhold any remaining information, to the extent it exists, under section 552.101 of the Government Code in conjunction with common-law privacy. *See id.* § 411.114.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mo

Ref: ID# 815944

Enc. Submitted documents

c: Requestor  
(w/o enclosures)