



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 12, 2020

Ms. Katlyn Betterton  
Department of Records  
Anderson County Sheriff's Office  
1200 East Lacy  
Palestine, Texas 75801

OR2020-13475

Dear Ms. Betterton:

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# 827977.

The Anderson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to two named individuals. The sheriff's office claims the requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception the sheriff's office 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

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<sup>1</sup> We note the sheriff's office failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code can provide a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.301, .302. Accordingly, we will consider the sheriff's office's argument.

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 either of two named individuals. This request requires the sheriff's office to compile each named individual's criminal history and implicates each named individual's right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note 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) [DFPS] or the Health and Human Services Commission ["HHSC"], as applicable, shall obtain from the [Department of Public Safety ("DPS")] criminal history record information ["CHRI"] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report [DFPS] or [HHSC] 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] and [HHSC] are 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 representative 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. 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). The requestor does not state whether either subject of the requested information is an alleged perpetrator in a report received by DFPS of abuse, neglect, or exploitation of a child, an elderly person, or a person with a disability. Thus, we must rule conditionally.

Therefore, to the extent either of the named individuals is an alleged perpetrator in a report received by DFPS of abuse, neglect, or exploitation of a child, an elderly person, or a person with a disability, the sheriff's office must release to the requestor the CHRI regarding that individual pursuant to section 411.114 of the Government Code. In that event, to the extent it exists, the sheriff's office must withhold any remaining information depicting the named individuals as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent neither of the named individuals is an alleged perpetrator in a report received by DFPS of the abuse, neglect, or exploitation of a child, an elderly person, or a person with a disability, then, to the extent the sheriff's office maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such 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 <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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/eb

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)