



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2020

Mr. Taylor Paris
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-30447

Dear Mr. Paris:

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# 856555 (Ref No. W106037).

The Fort Worth Police Department (the "department") received a request for all information related to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim 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. This section 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 *Industrial Foundation*. *Id.* at 683. 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 present request requires the department to compile unspecified law enforcement records concerning the individual named in the request. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Accordingly, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is a representative of the Office of Capital and Forensic Writs (the "OCFW"). Section 411.1272 of the Government Code provides:

The [OCFW] and a public defender's office are entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [{"CHRI"}] maintained by the [DPS] that relates to a criminal case in which an attorney compensated by the OCFW . . . has been appointed.

Gov't Code § 411.1272. In addition, section 411.087 of the Government Code provides, in part:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by the [[DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state CHRI maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as "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, the requestor is authorized to obtain the CHRI in the information at issue from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the OCFW is appointed. *See id.* §§ 411.087(a)(2), .1272. 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. 2.006) (common law controls only where there is no conflicting or controlling statutory law). Further, although the department raises section 552.108 of the Government Code for the requested information, we note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See Open Records Decision Nos.* 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986) (specific statutory right of access provisions

overcome general exception to disclosure under the Act). Accordingly, if the department determines the requested information, to the extent it exists, relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the department must release the CHRI to this requestor. Conversely, if the department determines the information at issue does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the department is not required to release the CHRI, to the extent it exists, to the requestor.

In summary, to the extent the department maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requested information, to the extent it exists, relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the department must release the CHRI to this requestor.

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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/be

Ref: ID# 856555

Enc. Submitted documents

c: Requestor
(w/o enclosures)