



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 9, 2020

Ms. Alicia K. Kreh
Attorney for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2020-30839

Dear Ms. Kreh:

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# 856787.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to two named individuals and a specified address during a specified time period. You state you will redact motor vehicle record information under section 552.130(c) of the Government Code, social security numbers under section 552.147(b) of the Government Code, and information pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the requested information was not properly requested under chapter 1701 of the Occupations Code. You also claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments.

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

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

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 town to compile the named individuals' criminal histories and implicates the named individuals' right to privacy. Therefore, to the extent the town maintains law enforcement records listing either named individual as a suspect, arrestee, or criminal defendant, the town 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 (the "DFPS"). Section 411.114(a) of the Government Code states, in pertinent part:

(2) The [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 [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report the [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, the [DFPS] and the 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). Law enforcement

entities shall expedite the furnishing of such information to [DFPS] workers or [HHSC] workers, as applicable, to ensure prompt criminal background checks for the safety of alleged victims and [DFPS] workers or [HHSC] workers, as applicable.

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. *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 specifically state whether the named individuals are alleged perpetrators in a report received by DFPS of abuse, neglect, or exploitation of child, an elderly person, or a person with a disability. Thus, we are unable to determine whether 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 named individual is an alleged perpetrator in a report received by DFPS of abuse, neglect, or exploitation of child, an elderly person, or a person with a disability, then the town is not required to release the CHRI pursuant to section 411.114. However, if either named individual is an alleged perpetrator in a report received by DFPS of abuse, neglect, or exploitation of child, an elderly person, or a person with a disability, then the requestor is generally authorized by section 411.114 of the Government Code to obtain CHRI from the town regarding that individual. *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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/rm

Ref: ID# 856787

Enc. Submitted documents

c: Requestor
(w/o enclosures)