



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 21, 2020

Mr. Trenton M. Dietz  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2020-31942

Dear Mr. Dietz:

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# 859036 (ORR# 20-2045).

The Abilene Police Department (the "department") received a request for all police records for two named individuals. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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 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. However, information that refers to an individual solely

as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request seeks all reports pertaining to two named individuals. This request requires the department to compile the named individuals' criminal histories and implicates each named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the department 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 either of the named individuals 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. 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 of the named individuals 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 department is not required to release the CHRI pursuant to section 411.114. However, if either of the named individuals 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 department regarding those individuals. *See id.* § 411.114.

We note the department has submitted information that does not list either of the named individuals as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individuals' criminal histories, and the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert case number 19073103 and call numbers 19182451 and 19182522 are subject to chapter 261 of the Family Code. Upon review, however, we find the department failed to demonstrate the information was used or developed in an investigation of alleged or suspected child abuse, consists of a report of alleged or suspected abuse or neglect under chapter 261 of the Family Code, or reveals the identity of an individual who made a report of alleged or suspected child abuse. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we conclude section 261.201 is not applicable to the information at issue, and it may not be withheld on that basis.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov’t Code § 552.108(a)(1). Section 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. A governmental body claiming section 552.108 must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Upon review, we find you have failed to demonstrate the information at issue pertains to a specific ongoing criminal investigation or prosecution. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) of the Government Code, and the department may not withhold any of the information at issue on that basis.

Section 552.101 also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. Upon review, we find some of the submitted

information at issue, consists of CHRI that is confidential under section 411.083. However, this requestor has a right of access under section 411.114 to CHRI in information held by the department if the information involves an alleged perpetrator in a report of child abuse or neglect. Therefore, if the named individual at issue is an alleged perpetrator in a report of child abuse or neglect that was reported to DFPS, then department may not withhold the CHRI you indicated from this requestor under section 552.101 of the Government Code in conjunction with section 411.114 of the Government Code. To the extent the named individual is not an alleged perpetrator in a report of child abuse or neglect that was reported to DFPS, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

As stated above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find the some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the dates of birth of public citizens and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a). Upon review, we find the department must withhold the driver's license and license plate information in the remaining information under section 552.130 of the Government Code.

However, the department has the discretion to release the information at issue pursuant to an intergovernmental transfer. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

We note the doctrine of common-law privacy does not have specific release provisions governing public release of information. Thus, pursuant to the intergovernmental transfer doctrine, the department has the discretion to release the information we marked under the doctrine of common-law privacy. Furthermore, the release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See. e.g.*, Attorney General Opinion Nos. H 917 at 1 (1976), H 242 (1974); *see also* Gov't Code §§ 552,007, .352. Thus, the department does not waive its interests in withholding this information by exercising its discretion under the intergovernmental transfer doctrine. However, we note section 552.130 of the Government Code has access provisions governing release of information. Thus, the information we marked under this section may not be released pursuant to the intergovernmental transfer doctrine. We also note criminal history CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is subject to section 411.083 of the Government Code, which authorizes release of such information only to specific entities. *See* Gov't Code §§ 411.083(c), 411.114(a). Thus, the CHRI you indicated may only be released to this requestor if the named individual at issue is an alleged perpetrator in a report of child abuse or neglect that was reported to DFPS.

In summary, to the extent the department maintains law enforcement records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common law privacy; however, if the 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 to the extent it exists, the department must release CHRI pertaining to the named individual pursuant to section 411.114 of the Government Code. To the extent the named individual is not an alleged perpetrator in a report of child abuse or neglect that was reported to DFPS, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the dates of birth of public citizens and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the drivers license and license plate information in the remaining information under section 552.130 of the Government Code. Pursuant to the

intergovernmental transfer doctrine, the department has the discretion to release the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy to the requestor. The department must release the remaining information.

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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/be

Ref: ID# 859036

Enc. Submitted documents

c: Requestor  
(w/o enclosures)