



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2022

Ms. Ramona Chavez
Police Records Technician
City of Victoria
P.O. Box 2086
Victoria, Texas 77902-2086

OR2022-00720

Dear Ms. Chavez:

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# 924958.

The City of Victoria (the "[GB]") received a request for all reports involving a named individual during a specified time period. The [GB] claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the [GB] claims and reviewed the submitted information.

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 information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). The information we marked was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the [GB]'s police department (the "department"). *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The [GB] does not indicate the department has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the [GB] must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

We note section 261.201 provides information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a). Subchapter E of chapter 264 of the Family Code concerns the establishment and duties of children's advocacy centers. *See id.* §§ 264.401-.411. Section 264.405 of the Family Code directs children's advocacy centers to provide services for victims of child abuse and their families. *Id.* § 264.405. Furthermore, section 264.408(c) of the Family Code provides "a law enforcement agency . . . may share with a [children's advocacy] center information that is confidential under Section 261.201 as needed to provide services" under chapter 264 of the Family Code. *Id.* § 264.408(c).

We note the requestor is a representative of Court Appointed Special Advocates ("CASA"). However, the requestor does not state whether the information we marked is sought for the purposes of providing services under chapter 264 of the Family Code. Therefore, we must rule conditionally. If the department determines the information subject to section 261.201 is needed to provide services under chapter 264 of the Family Code, then the department generally has the discretion to release the information at issue to this requestor pursuant to section 264.408(c). We note information shared with or provided to CASA under section 264.408(c) retains its confidentiality under section 261.201(a) of the Family Code. *See id.* Although the [GB] seeks to withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy, a specific statutory right of access generally prevails over the common-law. *See 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); Attorney General Opinion DM-146 at 3 (1992). If, however, the department determines the information at issue is not needed to provide services under chapter 264, then the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also 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. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information).

The present request seeks all reports pertaining to a named individual. This request requires the [GB] to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, with the exception of the report we marked, to the extent the [GB] maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the [GB] must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the [GB] has submitted records relating to routine traffic violations, as well as information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the [GB] 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 information protected by 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 F, or subchapter E-1 of the Government Code. *See Gov't Code* § 411.083(a). 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 F, of the Government Code. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the [GB] has not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the [GB] may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Some of the information at issue is protected under section 552.101 of the Government Code in conjunction with 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. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 agree the [GB] must withhold the public citizen's date of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the department determines the report we marked is needed to provide services under chapter 264 of the Family Code, then the department has the discretion to release the marked report to this requestor pursuant to section 264.408(c) of the Family Code; however, the department determines the marked report is not needed to provide services under chapter 264 of the Family Code, then the department must withhold that report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the report we marked, to the extent the [GB] maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the [GB] must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The [GB] must withhold the public citizen's date of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The [GB] 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 924958

Enc. Submitted documents

c: Requestor
(w/o enclosures)