



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2022

Mr. Nico Arias
Assistant City Attorney
City of Fort Worth
200 Texas Street, Third Floor
Fort Worth, Texas 76102

OR2022-00867

Dear Mr. Arias:

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# 925968 (ORR# E000088).

The City of Fort Worth (the "city") received a request for all reports involving a named individual. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city 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 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.

The present request seeks all reports pertaining to a named individual. This request requires the city to compile the named individual's criminal history and implicates the privacy of the named individual. Therefore, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must generally withhold 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 Wisconsin Department of Corrections (the "department"). Section 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information maintained by the [Texas Department of Public Safety] about a person." See Gov't Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Texas Department of Public Safety] criminal history record information ["CHRI"] maintained by the [Texas Department of Public Safety] that relates to another person is authorized to:

...

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

Id. § 411.087(a)(2). We note 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). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. See *id.* §§ 411.083(c), .087(b); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

We understand the department is a criminal justice agency, and the requestor intends to use the CHRI for a criminal justice purpose. Thus, the requestor is authorized to obtain CHRI from the city pursuant to section 411.087(a)(2) of the Government Code. Accordingly, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must make available to the requestor the CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. 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 Open Records Decision Nos. 613 at 4 (1993) (exceptions in the Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). To the extent it exists, the city must withhold any remaining

information 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/ba

Ref: ID#

Enc. Submitted documents

c: Requestor
(w/o enclosures)