



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2022

Ms. Leslie A. Whitten
Assistant City Attorney II
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2022-19223

Dear Ms. Whitten:

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# 954246 (File #A22-000716).

The City of College Station (the "city") received a request for incident reports and call sheets involving any of three named individuals, including a named child, at a specified address during a certain date range. 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.

Initially, we note the submitted information includes a grand jury subpoena and information obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decision Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the

city holds the information at issue solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to release that information in response to the instant request.¹ To the extent the city holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address the claimed exceptions.

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. Section 552.101 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 private 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 city to compile unspecified law enforcement records concerning the named individuals, thus implicating the named individuals’ right to privacy. We note the requestor is the representative of the named child (the “requestor’s client”). Thus, the requestor has a right of access to information involving her client that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, information involving the requestor’s client may not be withheld as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the information involving the requestor’s client, to the extent the city maintains unspecified law enforcement records depicting the remaining named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.²

¹ In this instance, as we are able to make this determination, we need not address your arguments against disclosure of this information.

² Although the requestor asserts a right of access to the requested information pursuant to section 107.006 of the Family Code, in this instance, we find this right of access is not applicable. *See* Fam. Code § 107.006(a) (providing that in conjunction with an appointment under chapter 107, other than an appointment of an attorney ad litem for an adult or a parent, court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to the child and any information relating to the child).

The requestor asserts she has a right of access to the information relating to her client pursuant to section 107.006(b) of the Family Code, which provides, in relevant part, the following:

(a) In conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to the child and any information relating to the child.

(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social services, law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).

Fam. Code § 107.006(a)-(b). The requestor is a representative of Voices for Children Court Appointed Special Advocates (“CASA”) and is a court-appointed guardian ad litem of the child at issue. The requestor states an Order of Protection was issued that provides CASA with access to information pertaining to the child in accordance with section 107.006(a) of the Family Code. Accordingly, we find the requestor generally has a right of access to the information at issue pursuant to section 107.006(b) of the Family Code. *See id.* § 107.006(b). Although you raise section 552.108 of the Government Code to withhold some of the information at issue, we note a statutory right of access prevails over the Act’s general exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor’s statutory access under section 107.006 prevails, and the city may not withhold any of the information at issue under section 552.108 of the Government Code. Additionally, although you also raise section 552.101 of the Government Code in conjunction with common-law privacy, we note a specific statutory right of access overcomes the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and pre-empts common law only when statute directly conflicts with common-law principle). Therefore, no portion of the information at issue may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing [EMS] to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Upon review, we find the information we marked constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, except for the information subject to section 773.091(g), the city must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, 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.³ See Gov't Code § 552.130. Accordingly, the city must generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

As previously discussed, the requestor has a right of access to the information at issue pursuant to section 107.006(b) of the Family Code. As also noted above, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. See ORDs 613 at 4, 451 at 4 (specific statutory right of access provisions overcome Act's general exceptions to disclosure). Section 552.130 of the Government Code has its own access provisions. Therefore, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided pursuant to section 107.006(b) of the Family Code and the confidentiality provided by section 773.091 of the Health and Safety Code and section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. See *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well established rule of statutory construction, specific statutory provisions prevail over general ones). Section 107.006(b) of the Family Code, in relevant part, generally allows a court-appointed guardian ad litem access to records relating to a child. However, section 773.091 of the Health and Safety Code specifically protects EMS records and section 552.130 of the

³ 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, 480 (1987), 470 (1987).

Government Code specifically protects motor vehicle record information. Therefore, we conclude the confidentiality provided under section 773.091 of the Health and Safety Code and section 552.130 of the Government Code is more specific than the access provided under section 107.006(b) of the Family Code. We then conclude, notwithstanding the right of access in section 107.006(b) of the Family Code, except for the information subject to section 773.091(g) of the Health and Safety Code, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, and the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, to the extent the city holds the information at issue solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to release that information in response to the instant request. With the exception of the information involving the requestor's client, to the extent the city maintains unspecified law enforcement records depicting the remaining named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information subject to section 773.091(g) of the Health and Safety Code, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information.⁴

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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jm

⁴ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Fam. Code § 107.006(b); ORD 481 at 4. Thus, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.

Ref: ID# 954246

Enc. Submitted documents

c: Requestor
(w/o enclosures)