



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2022

Ms. Lauren Azopardi
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-20364

Dear Ms. Azopardi:

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# 958749 (City PIR No. E002697-042222).

The Fort Worth Police Department (the "department") received a request for incident reports involving two named individuals and a specified address made during a specified time period. You state you will release some information to the requestor. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

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 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. 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 department to compile the named individuals' criminal histories and implicates the named individuals' 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, we note the requestor is a representative of the Tarrant County Domestic Relations Office (the "domestic relations office"). Accordingly, the requestor may have a right of access to portions of the requested information pursuant to section 411.1285 of the Government Code. Section 411.1285 of the Government Code provides, in relevant part:

(a) A domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the "DPS")] criminal history record information [{"CHRI"}] that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.

(a-1) A domestic relations office created under Chapter 203, Family Code, or a child custody evaluator appointed under Chapter 107, Family Code, is entitled to obtain from the [DPS CHRI] that relates to a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office or child custody evaluator has been appointed to conduct the child custody evaluation.

Gov't Code § 411.1285(a), (a-1); *see* Fam. Code ch. 203 (governing administration of domestic relations offices). Additionally, section 411.087 of the Government Code provides, in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] [CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). CHRI means "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." *Id.* § 411.082(2). Thus, a domestic relations office may receive CHRI only if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See*

id. § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

As noted above, the requestor is a representative of the domestic relations office. However, the requestor does not indicate whether the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or a court-ordered child custody evaluation regarding the individuals at issue. Therefore, we must rule conditionally. If the department determines the requestor is performing is performing services permitted under chapter 203 of the Family Code or a court-ordered child custody evaluation regarding the individuals at issue, then the department must release any CHRI pursuant to sections 411.087 and 411.1285(a) or 411.1285(a-1) of the Government Code. In this case, we note the requestor's statutory right of access prevails over the doctrine of 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); *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). Furthermore, although you raise section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, we note section 261.201(a) 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). Chapter 411 of the Government Code constitutes “applicable state law” in this instance.

Accordingly, if the department determines the information does not relate to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or a court-ordered child custody evaluation regarding the individuals at issue, then, to the extent the department maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or a court-ordered child custody evaluation regarding the individuals at issue, then, to the extent the department maintains any law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the department must release information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions to this requestor, and 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 958749

Enc. Submitted documents

c: Requestor
(w/o enclosures)