



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 31, 2022

Mr. Avis D. White  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2022-26543

Dear Mr. White:

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# 969413 (Killeen ID #W039581).

The City of Killeen (the "city") received a request for all reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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). Upon review, we agree a portion of the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect by the city'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. You do 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 city 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).* However, 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." Fam. Code § 261.201(a). We note chapter 411 of the Government Code constitutes "applicable state law" in this instance.

Section 411.089(a) of the Government Code provides, "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information ["CHRI"] maintained by the [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:

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

*Id.* § 411.087(a)(2). 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). Thus, the information we have marked contains CHRI. 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 CHRI). Thus, to the extent the requestor in this instance represents a "criminal justice agency," the requestor is authorized to obtain CHRI from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and for purposes consistent with the Family Code. *See Fam. Code § 261.201(a); Gov't Code §§ 411.083(c), .087(a)(2).*

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 66.001 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 66.001 defines “administration of criminal justice” as the “the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Crim. Proc. Code art. 66.001(1).

The requestor is a representative of the United States Secret Service. Although it appears the United States Secret Service is engaged in the administration of criminal justice, we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose or for purposes consistent with the Family Code. Accordingly, we must rule conditionally. If the city determines the requestor intends to use the CHRI for a criminal justice purpose and purposes consistent with the Family Code, then the city must make available to the requestor the CHRI from the information we marked that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the city determines the requestor does not seek this information for a criminal justice purpose and for purposes consistent with the Family Code, then the city must withhold the information we marked in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also 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. 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 privacy 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 seeks unspecified law enforcement records 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 any additional 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.

As previously noted, however, the requestor may have a right of access to CHRI in this information pursuant to chapter 411 of the Government Code. 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). Because we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose, we must rule conditionally. Accordingly, we conclude if the city determines the requestor intends to use the CHRI for a criminal justice purpose, then the city must make available to the requestor any CHRI from any documents otherwise subject to section 552.101 in conjunction with common-law privacy that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that event, the city must withhold any remaining information listing the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the city determines the requestor does not seek access to the information at issue for a criminal justice purpose, then the requestor does not have a right of access to any CHRI under section 411.089. In that event, to the extent the city maintains law enforcement records, other than the records we have marked under section 261.201 of the Family Code, depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information in its entirety under section 552.101 in conjunction with common-law privacy.

In summary, if the city determines the requestor intends to use the CHRI for a criminal justice purpose and purposes consistent with the Family Code, then the city must make available to the requestor the CHRI from the information we marked that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and must withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the city determines the requestor does not seek this information for a criminal justice purpose and for purposes consistent with the Family Code, then the city must withhold the information we marked in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the city determines the requestor intends to use the CHRI for a criminal justice purpose, then the city must make available to the requestor any CHRI from any additional law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that event, the city must withhold any remaining information listing the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the city determines the requestor does not seek access to the information at issue for a criminal justice purpose, then to the extent the city maintains law enforcement records, other than the records we have marked under section 261.201 of the Family Code, depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information in its entirety under section 552.101 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,

Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/mo

Ref: ID# 969413

Enc. Submitted documents

c: Requestor  
(w/o enclosures)