



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2022

Ms. Destiney-Ariel Hicks
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-30539

Dear Ms. Hicks:

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# 976137 (PIR No. E003967-071322).

The City of Fort Worth (the "city") received a request for a specified report involving two named individuals. 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.

Section 552.101 of the Government Code excepts "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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the submitted information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the report from this requestor would not preserve the individual's common-law right of privacy. Therefore, we conclude the city must generally withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is a representative of the Texas Department of Family and Protective Services (the “DFPS”) and we understand that she claims a right of access to the information at issue pursuant to section 261.105 of the Family Code. Section 261.105 provides, in relevant part, as follows:

(a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare shall be referred immediately to the [DFPS].

(b) The [DFPS] shall immediately notify the appropriate state or local law enforcement agency of any report it receives, other than a report for a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect.

Fam. Code § 261.105(a), (b). Upon review, we find the submitted information does not involve child abuse or neglect by either of the named individuals relating to a child to whom the individual is responsible for the care, custody, or welfare. Therefore, we find the requestor has failed to demonstrate she has a right of access to the submitted information under section 261.105 of the Family Code.

As previously noted, the requestor is a representative of DFPS. Section 411.114 of the Government Code allows, among other things, for DFPS to obtain criminal history record information (“CHRI”) concerning an individual who is the subject of a report of abuse or neglect of a child. *See* Gov’t Code § 411.114(a)(4), (a)(2)(I). CHRI consists of “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). Although the city raises section 552.101 of the Government Code in conjunction with common-law privacy for such information, we note a specific 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); *Center Point Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law).

However, in this instance, the requestor does not state whether the offender listed in the submitted information is a suspect in a report of abuse or neglect of a child. Therefore, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to the CHRI in the submitted information and must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). Accordingly, if the offender listed in the submitted information is a suspect in a report of abuse or neglect of a child, then the city must release information that shows the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In this instance, the remaining information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the offender listed in the submitted

information is not a suspect in a report of abuse or neglect of a child, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 976137

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.