



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 24, 2022

Mr. Trenton M. Dietz  
Assistant City Attorney  
City of Abilene  
Post Office Box 60  
Abilene, Texas 79604-0060

OR2022-32812

Dear Mr. Dietz:

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# 979395.

The City of Abilene (the "city") received a request for police records and call reports pertaining to a named individual during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 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 named individual's right to privacy. 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.

We note the requestor is a representative of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114(a) of the Government Code states in pertinent part:

(2) [DFPS] . . . shall obtain from the [Department of Public Safety ("DPS")] criminal history record information ["CHRI"] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report the [DFPS] . . . receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

(3) In addition to the criminal history record information the [DFPS] . . . is required to obtain under Subdivision (2), the [DFPS] . . . is entitled to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to a person who is:

...

(E) a person living in the residence in which the alleged victim of the report resides, including an alleged perpetrator in a report described by Subdivision (2)(I)[.]

(4) Subject to Section 411.087, [DFPS] . . . [is] entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (3)(E), (4)(B). 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.” *Id.* § 411.082(2). Thus, the requested information may contain CHRI, and the requestor has a right of access under section 411.114 to CHRI in information held by the city if it involves an alleged perpetrator in a report of child abuse or neglect or a person living in the residence in which the alleged victim of the report resides.

In this instance, the DFPS requestor does not state the named individual is an alleged perpetrator in a report of abuse or neglect of a child or is living in a residence in which a victim of child abuse or neglect resides, but only requests information about the named individual. Therefore, to the extent the requested information contains unspecified law enforcement records where the named individual is an alleged perpetrator in a report of, or living with a victim of, child abuse or neglect that was reported to DFPS, the city must generally release to this requestor the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from any requested information depicting such individual as a suspect, arrestee, or criminal defendant. *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.*, 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 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.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. To the extent it exists, the city must generally withhold any remaining information depicting 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 section 411.114 does not apply, then, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information in its entirety 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,

Justin H. Miller  
Attorney  
Open Records Division

JHM/eb

Ref: ID# 979395

Enc. Submitted documents

c: Requestor  
(w/o enclosures)