



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2022

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

OR2022-37315

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# 987366 (Request #22-1959).

The City of Abilene (the "city") received a request for information pertaining to two named individuals during a defined period of time. 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 city to compile the named individuals' criminal histories and implicates the named individuals' right to privacy. Therefore, to the extent the city maintains law enforcement records listing

either of the named individuals 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) The [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[.]

...

(4) Subject to Section 411.087, the [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), (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, this 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 abuse or neglect of a child, an elderly person, or a person with a disability.

As noted above, the requestor is a representative of the DFPS. In this instance, the requestor does not indicate whether the named individuals are the alleged perpetrators in a report of abuse or neglect of a child, an elderly person, or a person with a disability, but only requests information about the named individuals. Therefore, we must rule conditionally. Thus, to the extent the named individuals are the alleged perpetrators in a report of abuse or neglect of a child, an elderly person, or a person with a disability that was reported to DFPS, the

city must release the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from any responsive information depicting either named individual as a suspect, arrestee, or criminal defendant, to the extent it exists. 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). To the extent it exists, the city must withhold any remaining information depicting either named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the named individuals are not the alleged perpetrators in a report of abuse or neglect of a child, an elderly person, or a person with a disability that was reported to DFPS, then, to the extent the city maintains law enforcement records depicting either 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.

In summary, to the extent the city maintains any unspecified law enforcement records depicting either 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. However, if the named individuals are alleged perpetrators in a report of abuse or neglect of a child, an elderly person, or a person with a disability that was reported to DFPS, the city must release CHRI from any law enforcement records, to the extent they exist, depicting either named individual as a suspect, arrestee, or criminal defendant and must withhold any remaining information depicting either named individual as a suspect, arrestee, or criminal defendant 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

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Enc. Submitted documents

c: Requestor
(w/o enclosures)