



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2007

Ms. Patricia Fernandez
Open Government Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2007-12767

Dear Ms. Fernandez:

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# 290487.

The Texas Department of Family and Protective Services (the "department") received a request for notifications, replies to notifications, and risk evaluations pertaining to child care facility employees that have a "criminal conviction or central registry finding[.]" You claim that the requested 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. 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." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.114 of the Government Code provides:

(2) The [department] shall obtain from the [Department of Public Safety (“DPS”)] [CHRI] maintained by [DPS] that relates to a person who is:

.....

(B) an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, family home, or maternity home licensed, registered, certified, or listed under Chapter 42, Human Resources Code, or Chapter 249, Health and Safety Code;

.....

(6) [CHRI] obtained by the [department] under this subsection may not be released to any person except:

(A) on court order;

(B) with the consent of the person who is the subject of the [CHRI];

(C) for purposes of an administrative hearing held by the [department] concerning the person who is the subject of the [CHRI]; or

(D) as provided by Subdivision (7).

(7) The [department] is not prohibited from releasing [CHRI] obtained under this subsection to:

(A) the person who is the subject of the [CHRI]

(B) a child-care facility, child-placing agency, family home, or maternity home listed in Subdivision (2) that employs or is considering employing the person who is the subject of the [CHRI];

(C) a person or business entity described by Subdivision (2)(E) or (3) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the [CHRI]; or

(D) an adult residing with a child, elderly person, or person with a disability and the person who is the subject of the [CHRI], if the [department] determines that the release of information to the adult is necessary to ensure the safety or welfare of the child, elderly person, or person with a disability or the adult.

Gov't Code § 411.114(a)(2)(B), (a)(6), (a)(7). Based upon your arguments and our review, we find that a portion of the requested information, which we have marked, constitutes CHRI obtained from DPS that is confidential under section 411.114 of the Government Code. You state that none of the release provisions are applicable in this instance. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with section 411.114. However, the department has failed to demonstrate how any of the remaining information constitutes CHRI for the purposes of section 411.114.

Section 552.101 of the Government Code also encompasses the common-law right to privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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 met. *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) (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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, although portions of the remaining information could be considered highly intimate or embarrassing, we find that the information is of legitimate public interest. Therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 of the Government Code on that basis.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 411.114 of the Government Code. The remaining information must be released.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

¹We note that the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/jb

Ref: ID# 290487

Enc. Submitted documents

c: Ms. Peggy Heinkel-Wolfe
c/o Ms. Patricia Fernandez
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(w/o enclosures)