



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2007

Ms. Teresa J. Brown  
Senior Open Records Assistant  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2007-14143

Dear Ms. Brown:

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# 293055.

The Plano Police Department (the "department") received a request for all information pertaining to three named individuals from 1992 to the date of the request. You state that you have released some information to the requestor. You claim that 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law 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 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. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, under section 552.023 of the Government Code, a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code §§ 552.023; 552.229 (consent to release information under special right of access). In this instance the department argues that the current request requires the department to compile the criminal history of the named individuals. However, although the request calls for a compilation of criminal histories that would generally implicate common-law privacy, we note that the requestor submitted a release form signed by all of the named individuals which authorizes the requestor to obtain police reports from the department. The submitted records consist solely of police reports. Therefore, because the individuals at issue have granted the requestor a right of access to police records involving them, you may not withhold any information from the requestor under section 552.101 on the basis of these individuals' right to privacy.

Section 552.101 of the Government Code also encompasses information made confidential by statute. Section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family 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 [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because the information we have marked consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude that the marked information is confidential pursuant to section 261.201 of the Family Code and is generally excepted from public disclosure pursuant to section 552.101. However, section 261.201 also provides that information encompassed by subsection (a) may

be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.*

We note that chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Department of Public Safety] criminal history record information that relates to a person who is a subject of a social study under Subchapter D, Chapter 107, Family Code.” *See Gov’t Code* § 411.1285(a).<sup>1</sup> Additionally, a district court “may order the preparation of a social study into the circumstances and condition of the child and of the home of any person requesting managing conservatorship or possession of the child.” *Fam. Code* § 107.051(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 to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

*Gov’t Code* § 411.087(a)(2). We note that “criminal history record information” 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.” *Id.* § 411.082(2). The information that we have marked under section 261.201 of the Family Code contains “criminal history record information.” However, a domestic relations office that receives criminal history record information from a criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for purposes of conducting a social study under subchapter D, of chapter 107 of the Family Code. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

The requestor states that she has been appointed by the Collin County District Courts to complete a social study of the named individuals. If the department determines that the requestor is conducting a social study under chapter 107 of the Family Code and that disclosure of the submitted information is consistent with the Family Code, then the

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<sup>1</sup>A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” *Fam. Code* § 203.001(2).

department must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal 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). With the exception of this information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines that the requestor does not intend to use the criminal history record information for the purpose of conducting a social study under chapter 107 or that disclosure of the information is not consistent with the Family Code, then the department must withhold the information we have marked in its entirety pursuant to 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) (construing predecessor statute). The remaining information must be released.<sup>2</sup>

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 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

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<sup>2</sup>We note that although the requestor has a right of access to the remaining information, some of the information being released is confidential and not subject to release to the general public. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, then the department must again seek a ruling from this office.

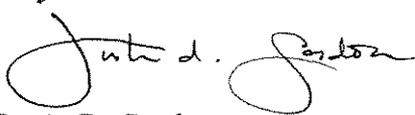
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/jh

Ref: ID# 293055

Enc. Submitted documents

c: Ms. Christy Bradshaw Schmidt  
P.O. Box 701328  
Dallas, Texas 75370  
(w/o enclosures)