



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 26, 2009

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-12085

Dear Ms. Villarreal:

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# 353748 (City of Waco Reference #: LGL-09-611).

The Waco Police Department (the "department") received a request for all police reports pertaining to a specified address and four named individuals. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to this request as it does not pertain to the named individuals. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

We note that the present request for reports pertaining to the named individuals implicates their common-law right to privacy. 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. 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. 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 "ones" 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, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

The present request seeks all police reports involving named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the Department of Public Safety (the "DPS") is required to provide criminal history record information ("CHRI") to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded that a local housing authority is a noncriminal justice agency authorized by federal statute to receive CHRI. Open Records Decision No. 655 at 4 (1997). The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides that "the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). The requestor is with the Waco Housing Authority (the "housing authority") and seeks the CHRI of named individuals. The housing authority is authorized to receive CHRI from the DPS, and pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). Accordingly, the housing authority is also authorized to receive CHRI from a local criminal justice agency, such as the department. *See* ORD 655; *see also* Gov't Code §§ 411.083(b)(2), 411.087(a). 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." Gov't Code § 411.082(2).

Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult applicants

for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). In this instance, we cannot determine if the requestor is seeking the release of CHRI of an adult tenant for purposes of applicant screening, lease enforcement, or eviction. Consequently, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants and the department determines that the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, we conclude that the department must release information to this requestor that shows the types of allegations made and whether there were arrests, information, indictments, detentions, convictions, or other formal charges and their dispositions; to the extent they exist, the department must withhold the remainder of the records at issue from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). However, if the department determines that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, it must withhold any such information 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 353748

Enc. Submitted documents

cc: Requestor
(w/o enclosures)