



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2012

Ms. Linda Pemberton  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2012-16414

Dear Ms. Pemberton:

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# 468094 (Killeen ID# W008674).

The Killeen Police Department (the "department") received a request for all criminal history information regarding two named individuals. You state you have released basic information regarding report number 10-008239. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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 established. *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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning the two individuals named in the request, thus implicating the named individuals' right 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 withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides, "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information ["CHRI"] maintained by the [Department of Public Safety] about a person." See Gov't Code § 411.089(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] [CHRI] 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 [CHRI] maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). We note 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." See *id.* § 411.082(2). Thus, in this instance, the requested information, to the extent it exists, may contain CHRI. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. See *id.* §§ 411.083(c), .087(b); see also Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor in this instance is a representative of a "criminal justice agency," she is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. See Gov't Code §§ 411.083(c), .087(a)(2).

A "criminal justice agency" is defined in part as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." *Id.* § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. See *id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, pretrial release, post-trial release,

prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Code Crim. Proc. art. 60.01(1).

In this instance, the requestor is an investigator with the Oklahoma Department of Human Services. We are unable to determine whether she is a representative of a criminal justice agency or whether she intends to use the CHRI for a criminal justice purpose. Consequently, if the department determines the requestor is a representative of a criminal justice agency for purposes of chapter 411 and she intends to use the CHRI for a criminal justice purpose, then the department must make available to the requestor CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, to the extent any such information exists. In that instance, the department must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. If the department determines the requestor either is not a representative of a criminal justice agency for purposes of 411 or does not seek this information for a criminal justice purpose, then to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted information in which the named individuals are not listed as suspects, arrestees, or criminal defendants. This information is not part of a criminal history compilation and, thus, does not implicate these individuals’ right to privacy. Accordingly, we will address your argument under section 552.108 of the Government Code for this information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 10-008239 relates to a pending criminal investigation. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the police report at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88.

Thus, with the exception of the basic front page offense and arrest information, which you state you have released, you may withhold report number 10-008239 from disclosure based on section 552.108(a)(1) of the Government Code.

In summary, if the department determines the requestor is a representative of a criminal justice agency for purposes of chapter 411 and she intends to use the CHRI for a criminal justice purpose, then the department must make available to the requestor CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, to the extent any such information exists, and withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, if the department determines the requestor either is not a representative of a criminal justice agency for purposes of chapter 411 or does not seek this information for a criminal justice purpose, then to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, the department may withhold report number 10-008239 under section 552.108(a)(1) of the Government Code. The basic information must be released.

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](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, toll free at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 468094

Enc. Submitted documents

c: Requestor  
(w/o enclosures)