



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2013

Ms. Rachel L. Lindsay  
Counsel for the City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2013-09173

Dear Ms. Lindsay:

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# 489605 (ORR# 10-7049).

The City of McKinney (the "city"), which you represent, received a request for the calls for service to two specified addresses during a specified time period and all the arrest records for two named individuals. You claim the responsive information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

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 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), *cert. denied*, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of this test must be

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<sup>1</sup>Although you also raise section 552.108 of the Government Code, you have not presented arguments explaining how this exception applies to the submitted information, as required by section 552.301 of Government Code. See Gov't Code §§ 552.301(e)(1)(A), .302.

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, in part, seeks all the arrest records for the named individuals. Accordingly, this part of the request requires the city to compile the named individuals' criminal history and, thus, implicates their privacy rights. Therefore, to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, such information is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of criminal history.

However, the requestor is an employee of the Child Protective Services Division of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code states in pertinent part:

(a)(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." *See generally 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 child abuse or neglect. Although you raise section 552.101 of the Government Code in conjunction with common-law privacy for such information, we note a specific statutory right of access prevails over a claim under common-law privacy. *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). In this case, the DFPS employee does not state the named individuals are the alleged perpetrators in a report of abuse or neglect of a child, but only requests information about the named individuals. Therefore, to the extent the named individuals are the alleged perpetrators in a report of child abuse or neglect 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 the named individuals as suspects, arrestees, or criminal defendants. *See id.* To the extent it exists, any remaining responsive information depicting the named individuals as suspects, arrestees, or criminal defendants must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have submitted information that does not depict either of the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate these individuals' privacy interests, and it may not be withheld as a criminal history compilation under section 552.101 in conjunction with common-law privacy. However, we will consider your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 58.007(c) of the Family Code, which provides as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b)(3) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the call for service report for case number 07-032446 in Exhibit D involves juvenile delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Accordingly, we find the call for service report for case number 07-032446 in Exhibit D is confidential pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code.<sup>2</sup>

Additionally, we find the call for service report for case number 04-012453 in Exhibit B involves delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply to this information. However, we are unable to determine whether the alleged suspects at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue. Therefore, we must rule conditionally. If any of the suspects at issue were ten years of age or older and under seventeen years of age at the time of the conduct, then the call for service report for case number 04-012453 in Exhibit B is confidential pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code on that basis. If all of these suspects were not ten years of age or older and under seventeen years of age at the time of the conduct, section 58.007 is not applicable this information, and it may not be withheld under section 552.101 in conjunction with section 58.007(c).

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part:

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this 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 this chapter and the identity of the person making the report; and

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

*Id.* § 261.201(a). You represent the call for service report for case number 04-037657 in Exhibit D was used or developed in an investigation of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(E) (definition of “abuse” for purposes of chapter 261 of Family code includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of section 22.011 as “a person younger than 17 years of age”). Thus, this information is subject to section 261.201(a). You do not indicate the city has adopted a rule that governs the release of the information at issue; therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold the call for service report for case number 04-037657 in Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, to the extent the named individuals are the alleged perpetrators in a report of child abuse or neglect 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 the named individuals as suspects, arrestees, or criminal defendants under section 411.114 of the Government Code. To the extent it exists, any remaining responsive information depicting the named individuals as suspects, arrestees, or criminal defendants must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The call for service report for case number 07-032446 in Exhibit D must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If any of the suspects at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the call for service report for case number 04-012453 in Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; otherwise, this information may not be withheld under section 552.101 of the Government Code on that basis. The city must withhold the call for service report for case number 04-037657 in Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the

Family Code. As no further exceptions to disclosure are raised for the remaining information, the city must release it.

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 489605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)