



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2014

Ms. Janis K. Hampton
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2014-00498

Dear Ms. Hampton:

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# 510274.

The Bryan Police Department (the "department") received a request for records involving four named individuals. You state you have released some of the responsive information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 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."¹ 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 satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 courthouses 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. We find the present request requires the department to compile unspecified criminal history records concerning the individuals named in the request, and thus, implicates the named individuals' privacy rights. 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 any such information under section 552.101 in conjunction with common-law privacy.

However, we note the requestor indicates she is conducting a court-ordered social study and may have a right of access to portions of the requested information pursuant to section 411.1285 of the Government Code. Section 411.1285(a) of the Government Code provides in part that "[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code."² *See* Gov't Code § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices). 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 [DPS] criminal history record information maintained by the [DPS] 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." *See id.* § 411.082(2). However, a

²A "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).

domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

As noted above, the requestor states she is conducting a social study of the four individuals named in the request. Therefore, if the department determines the requestor represents a domestic relations office created under chapter 203 of the Family Code that is providing services to a person who is a party to a proceeding under chapter 203 of the Family Code, then we find this requestor has a right of access to any criminal history record information pertaining to that person contained in the information at issue. We note the requestor's statutory right of access prevails over the doctrine of 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 addition, we note a specific statutory right-of-access provision prevails over the Act's general exceptions to disclosure, such as section 552.108. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986). Thus, if the department determines the requestor represents a domestic relations office created under chapter 203 of the Family Code that is providing services to a person who is a party to a proceeding under chapter 203 of the Family Code, then, to the extent the department maintains any law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must release information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and must withhold any such remaining information under section 552.101 in conjunction with common-law privacy. However, if the department determines the requestor does not represent a domestic relations office created under chapter 203 of the Family Code that is providing services to a person who is a party to a proceeding under chapter 203 of the Family Code, then, 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 in its entirety under section 552.101 in conjunction with common-law privacy.

We note you have submitted records that do not list any of the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interest of any of the named individuals and may not be withheld as a compilation of an individual's criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will consider your arguments against the disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state case number 03060184 pertains to a criminal investigation that ended in a result other than conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold case number 03060184 under section 552.108(a)(2) of the Government Code.³

In summary, 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 in conjunction with common-law privacy; however, if the department determines the requestor represents a domestic relations office created under chapter 203 of the Family Code that is providing services to a person who is a party to a proceeding under chapter 203 of the Family Code, the department must release information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. With the exception of basic information, the department may withhold case number 03060184 under section 552.108(a)(2) of the Government Code.

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.

³As noted above, the requestor indicates she is conducting a court-ordered social study and, therefore, may be entitled to obtain from the Department of Public Safety criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203. *See* Gov't Code § 411.1285(a); Fam. Code § 201.001(2) (defining "domestic relations office"). As case number 03060184 does not contain any criminal history record information that relates to any person who is the subject of the social study, we need not discuss the applicability of section 411.1285 to this information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/dls

Ref: ID# 510274

Enc. Submitted documents

c: Requestor
(w/o enclosures)