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ATTORNEY GENERAL OF TEXAS

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Mr. James D. Parker
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309 East Main Street
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OR2015-07954

Dear Mr. Parker:

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# 561790.

The Hutto Police Department (the "department"), which you represent, received a request for all records pertaining to five named individuals. You claim the submitted 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section also encompasses section 261.201(a) of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Fam. Code § 261.201(a). We find some of the submitted information consists of reports of alleged or suspected child abuse or files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, this information, which we have marked, is within the scope of section 261.201 of the Family Code. You do not indicate the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information we have marked is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find you have failed to demonstrate how any of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established any of the remaining information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 261.201 further provides, however, that information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides, “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety] criminal history record information (“CHRI”) 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.”¹ *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 [Texas Department of Public Safety] [CHRI] maintained by the [Texas 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.

¹A “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).

Gov't Code § 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, the information at issue contains CHRI. However, a domestic relations office may receive CHRI only 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). Thus, when read together, sections 411.087 and 411.1285(a) of the Government Code may provide a domestic relations office a right of access to CHRI in the information at issue.

In this instance, the requestor is a Guardian ad Litem with the Domestic Relations Office of Travis County. Therefore, if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code, the information we have marked is related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, and release of this information is consistent with the Family Code, then the department must make available to the requestor any CHRI of a party to the proceeding. We note a specific statutory right of access prevails over the doctrine of common-law privacy as well as the Act's general exceptions to disclosure. *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); Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986). In this case, the department must withhold the remaining 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 the requestor is not with a domestic relations office created under chapter 203 of the Family Code, the information we have marked is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, or disclosure of the CHRI is not consistent with the Family Code, then the department must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See id.* § 261.201 (b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986); Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

Section 552.108(a) 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). A governmental

body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). You state the remaining information relates to pending criminal investigations. Based on this representation, we conclude the release of case number 13-0223-0002 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to case number 13-0223-0002. However, 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the department may generally withhold case number 13-0223-0002 under section 552.108(a)(1) of the Government Code.

As previously noted, section 411.1285(a) of the Government Code allows a domestic relations office to obtain CHRI 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 of the Family Code. Therefore, if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code and case number 13-0223-0002 is related to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code, then the department must make available to the requestor any CHRI of a party to the proceeding, and, with the exception of basic information, may withhold the remaining information in case number 13-0223-0002 under section 552.108(a)(1) of the Government Code. *See* ORD 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the department determines the requestor is not with a domestic relations office created under chapter 203 of the Family Code or case number 13-0223-0002 is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, then, with the exception of basic information, the department may withhold case number 13-0223-0002 under section 552.108(a)(1) of the Government Code. *See* ORD 440 at 2; Attorney General Opinions DM-353 at 4 n.6, JM-590 at 4-5.

Report number 100501493, on the other hand, pertains to an investigation of alleged unauthorized use of a vehicle and criminal mischief that occurred in 2010. The longest possible statute of limitations for these offenses is three years. *See* Penal Code § 28.03(b)(7) (criminal mischief is a felony of the first degree if the amount of pecuniary loss is \$200,000 or more); *id.* § 31.07 (unauthorized use of a vehicle is a state jail felony); Crim. Proc. Code art. 12.01(7) (limitations on felony not otherwise listed in article 12.01 of Code of Criminal Procedure is three years from date of offense). You do not inform us criminal charges were filed within the limitations period and prosecution for this investigation was pending when the department received the request for information. You have also not otherwise explained

how release of this information would interfere with the detection, investigation, or prosecution of crime. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(1) of the Government Code to report number 100501493 and the department may not withhold it on that basis.

Nevertheless, we note report number 100501493 contains information that is confidential under common-law privacy and subject to section 552.130 of the Government Code. Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code, the information we have marked is related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, and release of the information is consistent with the Family Code, then the department must make available to the requestor any CHRI of a party to the proceeding and withhold the remaining 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 the requestor is not with a domestic relations office created under chapter 203 of the Family Code, the information we have marked is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, or disclosure of the CHRI is not consistent with the Family Code, then the department must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the

department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code and case number 13-0223-0002 is related to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code, then the department must make available to the requestor any CHRI of a party to the proceeding, and, with the exception of basic information, may withhold the remaining information in case number 13-0223-0002 under section 552.108(a)(1) of the Government Code. However, if the department determines the requestor is not with a domestic relations office created under chapter 203 of the Family Code or case number 13-0223-0002 is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, then, with the exception of basic information, the department may withhold case number 13-0223-0002 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining 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.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 561790

Enc. Submitted documents

c: Requestor
(w/o enclosures)