



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2015

Ms. Karon Newby-Cooley  
Senior Records Clerk  
Central Records Division  
City of Pflugerville  
P.O. Box 679  
Pflugerville, Texas 78691

OR2015-09808

Dear Ms. Newby-Cooley:

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# 564308 (Ref. No. W002116-030415).

The Pflugerville Police Department (the "department") received a request for all records related to two named individuals over a specified time period and all records related to a specified address. You state you have released some information to the requestor. You claim the submitted 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. 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.*

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<sup>1</sup>Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

*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 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 department to compile the named individuals' criminal histories and, thus, implicates their privacy rights. Therefore, to the extent the department 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.

Section 552.101 of the Government Code also encompasses information made confidential by statute, such as section 261.201(a) of the Family Code. Section 261.201(a) provides, in pertinent part:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). We note some of the responsive information, which we have marked, was used or developed in investigations of alleged or suspected child abuse conducted by the department. *See id.* § 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this information

is generally confidential under section 261.201 of the Family Code. However, we note the requestor is a representative of the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) provides “[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare shall be referred immediately to [DFPS].” *See id.* § 261.105(a). In this instance, the information at issue indicates the individuals suspected of child abuse were responsible for the child’s care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child’s care, custody, or welfare includes a member of the child’s family or household as defined by chapter 71 of the Family Code); *see also id.* § 71.005 (household is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply in this instance. *See Attorney General Opinion No. GA-0879 (2011)* (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child’s care, custody, or welfare to DFPS). Although the information at issue may be generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy, a specific statutory right of access prevails over the common law. *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 (5<sup>th</sup> Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the department must release the information we have marked to this requestor pursuant to section 261.105(a). We find you have failed to demonstrate that any of the remaining information consists of a report of alleged or suspected child abuse or was used or developed in an investigation under chapter 261 of the Family Code. *See Fam. Code* §§ 261.001, 101.003(a). Accordingly, section 261.201(a) is not applicable to any of the remaining information at issue, and no portion of the such information may be withheld under section 552.101 on that basis.

Additionally, the requestor may also have a right of access to some information that does not consist of reports that were used or developed in investigations of alleged or suspected child abuse, to the extent such information exists. 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 department if it involves an alleged perpetrator in a report of child abuse or neglect. As noted above, although section 552.101 of the Government Code in conjunction with common-law privacy may be applicable to portions of the requested information, we note a specific statutory right of access prevails over a claim under common-law privacy. *See Collins*, 297 S.W.3d at 415; *CenterPoint Energy*, 436 F.3d at 544. 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 that DFPS is investigating, 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 department 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 Gov't Code* § 411.114. 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. However, to the extent the named individuals are not alleged perpetrators in a report of child abuse or neglect that was reported to DFPS, then, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We also 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 remaining arguments against disclosure of this information.

You raise section 58.007 of the Family Code for the information at issue. 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(c), "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). Although you raise section 58.007 of the Family Code for the information at issue, you have not explained, and the information does not reflect, how it constitutes law enforcement records or files concerning an identified juvenile suspect or offender. Accordingly, no portion of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, the department must release the information we have marked to this requestor pursuant to section 261.105(a). To the extent the named individuals are the alleged perpetrators in a report of child abuse or neglect that was reported to DFPS, the department 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. 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. However, to the extent the named individuals are not alleged perpetrators in a report of child abuse or neglect that was reported to DFPS, then, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 564308

Enc. Submitted documents

c: Requestor  
(w/o enclosures)