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ATTORNEY GENERAL OF TEXAS

July 14, 2015

Ms. Mary Ann Powell
Counsel for the City of Humble
Olson & Olson LLP
Wortham Tower - Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133

OR2015-14293

Dear Ms. Powell:

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# 571490 (Ref. No. COHM15-014).

The Humble Police Department (the "department"), which you represent, received a request for information related to a specified incident and all other information involving two named individuals. You state the department will redact information pursuant to section 552.130(c) of the Government Code.¹ 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.

Initially, we note you did not submit any information related to the incident specified by the requestor. Therefore, to the extent information responsive to this aspect of the request exists, we assume the department has released it to the requestor. If you have not released any such information, you must do so at this time. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

apply to requested information, it must release information as soon as possible under circumstances).

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. This section encompasses the doctrine of common-law privacy, which protects information that (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 elements of the 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) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

You assert, and we agree, the request, in part, seeks unspecified law enforcement records pertaining to the named individuals. This part of the request requires the department to compile the named individuals’ criminal histories and implicates the named individuals’ rights to privacy. Therefore, to the extent the department maintains unspecified law enforcement records involving only the first named individual and listing that individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we find the requestor may be acting as an authorized representative of the second named individual, in which case the requestor would have a special right of access to this individual’s private information pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). After reviewing the remainder of the request, we find the requestor also seeks incident reports involving both named individuals. If the requestor is the authorized representative of the second named individual, then the requestor is aware of any such incidents involving both named individuals and this aspect of the request does not constitute a request for unspecified reports; thus, it does not implicate the first named individual’s right to privacy. Because we are unable to determine whether the requestor is acting as an authorized representative of the second named individual, we rule conditionally. Accordingly, if the requestor is not acting as an authorized representative of the second named individual, to the extent the department maintains law enforcement records involving either named individual as a suspect, arrestee,

or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. If, however, the requestor is acting as an authorized representative of the second named individual, the department may not withhold information pertaining to incidents involving both named individuals under section 552.101 in conjunction with common-law privacy as a compilation of criminal history. In that case, we will consider your remaining argument against disclosure of such information.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "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." Gov't Code § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov't Code § 411.083. Sections 411.083 (b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. Upon review, we find none of the remaining information consists of confidential CHRI under chapter 411, and thus, the department may not withhold any of it under section 552.101 of the Government Code on that basis.

In summary, if the requestor is not acting as an authorized representative of the second named individual, to the extent the department maintains law enforcement records involving either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as an authorized representative of the second named individual, the department must withhold any law enforcement records the department maintains that involve only the first named individual and list him as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and 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, 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 'Tim Neal', with a stylized, cursive script.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 571490

Enc. Submitted documents

c: Requestor
(w/o enclosures)