



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2016

Mr. Darrell G-M Noga
Counsel for City of Coppell
Cantey Hanger, L.L.P.
1999 Bryan Street, Suite 3300
Dallas, Texas 75201

OR2016-00727

Dear Mr. Noga:

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# 593617 (ORR No. W001547-101315).

The City of Coppell (the "city"), which you represent, received a request for offense and arrest records for a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim.

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 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 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) (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.

The present request seeks all arrest records pertaining to a named individual. This request requires the city to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the city must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor is a representative of the Dallas County Sheriff's Office, and may have a right of access to the requested information. Section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain from the Texas Department of Public Safety ("DPS") any criminal history record information ("CHRI") maintained by the DPS about a person. *See* Gov't Code § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or by Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] 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.

Id. § 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 may contain CHRI. We understand the requestor represents a criminal justice agency as defined by section 411.082. *See id.* § 411.082(3)(A) (defining "criminal justice agency" as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice"). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), 411.087(a)(2); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Although you also claim the requested information is excepted from disclosure under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in the Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Thus, the requestor is authorized to obtain CHRI from the city pursuant to

section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. See Gov't Code §§ 411.083(c), 411.087(a)(2).

Although it appears the requestor is engaged in the administration of criminal justice under chapter 411, to the extent the information at issue exists, we are unable to determine whether the requestor intends to use any CHRI at issue for a criminal justice purpose. Consequently, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, and the city determines the requestor intends to use the CHRI for a criminal justice purpose, we conclude the city must make available to the requestor the CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. 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); Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that event, to the extent it exists, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the city determines the requestor does not intend to use the CHRI for a criminal justice purpose, then the requestor does not have a right of access to any CHRI under section 411.089. In that event, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 593617

Enc. Submitted documents

c: Requestor
(w/o enclosures)