



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2016

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-07036

Dear Mr. Trevino:

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# 603460 (Fort Worth PIR# W048502).

The City of Fort Worth (the "city") received a request for information pertaining to a named individual. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[T]he 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). You assert Exhibit C-3 was used or developed in an investigation by the city's police department under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Upon review, we find Exhibit C-3 is within the scope of section 261.201 of the Family Code. You do not indicate the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we find Exhibit C-3 is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, section 261.201(a) also provides that information encompassed by subsection (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 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information ("CHRI") maintained by the [Department of Public Safety] about a person." *See* Gov't Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

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

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). We note Exhibit C-3 contains "CHRI." 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), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, if the requestor in this instance is a representative of a "criminal justice agency," she 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 and for purposes consistent with the Family Code. *See* Gov't Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

A "criminal justice agency" is defined in part 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[.]” Gov’t Code § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of CHRI.” Crim. Proc. Code art. 60.01(1).

The requestor is a representative of the Seattle Police Department (the “department”). Although the department is a criminal justice agency for purposes of chapter 411, we are unable to determine whether the requestor intends to use the requested CHRI for a criminal justice purpose. We also are unable to determine whether the requestor intends to use the information for purposes consistent with the Family Code. Consequently, if the city determines the requestor intends to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the city must release the information in Exhibit C-3 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you raise section 552.101 of the Government Code in conjunction with common-law privacy for Exhibit C-3, we note a statutory right of access prevails over the common-law. *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 that instance, the city must withhold the remaining information in Exhibit C-3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the city determines the requestor does not intend to use the CHRI for a criminal justice purpose or for purposes consistent with the Family Code, then the city must withhold Exhibit C-3 in its entirety pursuant to section 552.101 in conjunction with section 261.201. *See Fam. Code* § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

Section 552.101 of the Government Code also 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 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) (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). Moreover, 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 information pertaining to the named individual. This request requires the city to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Thus, to the extent the city maintains law enforcement records, other than Exhibit C-3, listing the named individual as a suspect, arrestee, or criminal defendant, the city must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of criminal history.

As noted above, however, the requestor, as a representative of the department, may have a right of access to CHRI in this information pursuant to chapter 411 of the Government Code. Although it appears the requestor is engaged in the administration of criminal justice, we cannot determine whether he intends to use CHRI for a criminal justice purpose. Consequently, if the city determines the requestor intends to use CHRI for a criminal justice purpose, we conclude, to the extent the city maintains law enforcement records, other than Exhibit C-3, listing the named individual as a suspect, arrested person, or criminal defendant, the city must make available to the requestor CHRI from such documents 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*, 297 S.W.3d at 415; *CenterPoint Energy*, 436 F.3d at 544. In that event, the city must withhold any remaining information, to the extent it exists, under section 552.101 in conjunction with common-law privacy. However, if the city determines the requestor does not intend to use CHRI for a criminal justice purpose, to the extent the city maintains law enforcement records, other than Exhibit C-3, listing the named individual as a suspect, arrested person, or criminal defendant, the requestor does not have a right of access to any CHRI under section 411.087. In that instance, to the extent it exists, the city must withhold those records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the city determines the requestor intends to use CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the city must release the information in Exhibit C-3 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the city must withhold the remaining information in Exhibit C-3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the city determines the requestor does not intend to use the CHRI for a criminal justice purpose or for purposes consistent with the Family Code, then the city must withhold Exhibit C-3 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201. If the city determines the requestor intends to use CHRI for a criminal justice purpose, we conclude, to the extent the city maintains law enforcement records, other than Exhibit C-3, listing the named individual as a suspect, arrested person, or criminal defendant, the city must make available to the

requestor CHRI from such documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the city must withhold any remaining information, to the extent it exists, under section 552.101 of the Government Code in conjunction with common-law privacy. If the city determines the requestor does not intend to use CHRI for a criminal justice purpose, to the extent the city maintains law enforcement records, other than Exhibit C-3, listing the named individual as a suspect, arrested person, or criminal defendant, the city must withhold those records in their entirety 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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/dls

Ref: ID# 603460

Enc. Submitted documents

c: Requestor
(w/o enclosures)