



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2016

Ms. Victoria D. Honey
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-07853

Dear Ms. Honey:

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# 604591 (Fort Worth Request No. W048718).

The Fort Worth Police Department (the "department") received a request for information pertaining to three named individuals. You state the department has released some of the requested information. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

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. Section 552.101 encompasses the doctrine of 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning the individuals at issue. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor states she has been appointed by the Dallas County Family District Courts to complete a court-ordered social study involving the individuals named in the request. *See* Fam. Code § 107.103 (court ordered child custody evaluation must be performed by individual qualified under Fam. Code § 107.104); *see also id.* § 107.104(b)(3) (individual employed by or under contract with domestic relations office is qualified to conduct child custody evaluation). Accordingly, the requestor may have a right of access to portions of the requested information pursuant to section 411.1285 of the Government Code. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] 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, or a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation.” Gov’t Code § 411.1285(a); *see* Fam. Code chs. 203 (governing administration of domestic relations offices), 107 (governing child custody evaluations). Additionally, section 411.087 of the Government Code provides, in part:

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

Gov’t Code § 411.087(a)(2). 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.” *Id.* § 411.082(2). Thus, a domestic relations office may only receive CHRI 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, or a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

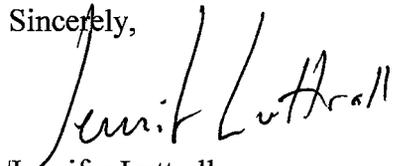
As noted above, the requestor states she is conducting a social study of the three individuals named in the request. Therefore, if the department determines the information at issue relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or to a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation, then, to the extent the department maintains any law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must release information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and must withhold any such remaining information under section 552.101 in conjunction with common-law privacy. We note the requestor’s statutory right of access in that instance prevails over the doctrine of common-law privacy. *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). However, if the department determines the information at issue does not relate 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 or to a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation, then, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold any such information in its entirety under section 552.101 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,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and "L".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 604591

Enc. Submitted documents

c: Requestor
(w/o enclosures)