



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2016

Mr. Nicholas Toulet
Assistant City Attorney
City Attorney's Office
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2016-10006

Dear Mr. Toulet:

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# 608370 (ORR No. 18825).

The Midland Police Department (the "department") received a request for all information pertaining to a named individual. The department states it has released some information to the requestor. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(c) 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). 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). The department asserts Exhibit C is confidential under section 58.007(c). However, the department has failed to demonstrate the information at issue depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Therefore, the department may not withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which 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.

Id. § 261.201(a). Upon review, we find Exhibit C consists of information that was used or developed in an investigation under chapter 261, so as to fall within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201 of Family Code). The department does not indicate it has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we find Exhibit C is generally confidential pursuant to section 261.201(a) of the Family Code.

However, we note the requestor is a representative of the Probation Office of the United States District Court for the Western District of Texas (the “probation office”). Section 261.201(a) provides that information encompassed by subsection (a) may be

disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 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 [Texas Department of Public Safety] any criminal history record information maintained by the [Texas 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 [Texas Department of Public Safety] criminal history record information maintained by the [Texas Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). We note criminal history record information (“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 contains CHRI of the named individual. 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 criminal history record information).

The department acknowledges the requestor represents a criminal justice agency and intends to use the CHRI for a criminal justice purpose. Thus, she is authorized to obtain the CHRI in Exhibit C from the department pursuant to section 411.087(a)(2) of the Government Code, but only for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a). We are unable to determine whether the requestor intends to use the CHRI of the named individual in Exhibit C for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI in Exhibit C for purposes consistent with the Family Code, then the department must release the information at issue that is otherwise subject to section 261.201 of the Family Code and 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 department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the department

must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Fam. Code § 261.201(b)-(g) (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 department 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 department maintains law enforcement records, other than Exhibit C, listing the named individual as a suspect, arrestee, or criminal defendant, the department 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.

We note, however, the requestor, as a representative of the probation office, may have a right of access to CHRI in this information pursuant to chapter 411 of the Government Code. The department acknowledges the requestor represents a criminal justice agency and intends to use any CHRI for a criminal justice purpose. Accordingly, to the extent the department maintains law enforcement records, other than Exhibit C, listing the named individual as a suspect, arrestee, or criminal defendant, we conclude the department 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). In that event, to the extent it exists, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of criminal history.

In summary, if the department determines the requestor intends to use the CHRI in Exhibit C for purposes consistent with the Family Code, then the department must release the

information at issue that is otherwise subject to section 261.201 of the Family Code and 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 department must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor does not intend to use the CHRI in Exhibit C for purposes consistent with the Family Code, then the department must withhold Exhibit C in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the department maintains any other law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI from those records that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, but must withhold under section 552.101 of the Government Code in conjunction with common-law privacy any remaining information listing the named individual as a suspect, arrested person, or criminal defendant.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 608370

Enc. Submitted documents

c: Requestor
(w/o enclosures)