



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2016

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2016-16342

Dear Mr. Gates:

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# 619548 (City ID# 19429).

The Midland Police Department (the "department") received a request for all offense reports and narratives concerning a named individual. You state the department has released criminal history record information ("CHRI") to the requestor pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2) (entity authorized by chapter 411, subchapter F of Government Code to obtain CHRI maintained by the Texas Department of Public Safety ("DPS") that relates to another person is authorized to obtain CHRI from any other criminal justice agency in this state that relates to the person); *see also id.* § 411.089 (criminal justice agency entitled to obtain from DPS any CHRI maintained by DPS about a person). 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 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. Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code. Section 261.201(a) 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). Upon review, we find report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 consist 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), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). You do not indicate the department 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 are generally confidential pursuant to section 261.201 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 contain 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).

You acknowledge the requestor represents a criminal justice agency and intends to use the CHRI for a criminal justice purpose. Thus, she is authorized to obtain CHRI 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI in report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 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. Although you raise common-law privacy for this information, 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 department must withhold the remaining information in report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 in their entireties 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 also 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) (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). 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 any arrest reports or narratives 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820, 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. You acknowledge 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820, 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*, 297 S.W.3d at 415. 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 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 report numbers 2009-00603542, 2009-00604760, 2009-00610527, and 2009-00908820 for purposes consistent with the Family Code, then the department must withhold these reports in their entireties 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.¹

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/dls

¹We note the requestor has a special right of access to the information being released in this instance.

Ref: ID# 619548

Enc. Submitted documents

c: Requestor
(w/o enclosures)