



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 18, 2007

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2007-13688

Dear Ms. Lentz:

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# 292092.

The Williamson County Sheriff's Office (the "sheriff") received two requests from the same requestor for any information involving a named individual, specifically including information related to two specified incidents. The requestor has allowed for the redaction of social security numbers and information subject to section 552.130. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor, in the request for information, excludes Texas motor vehicle record information and social security numbers. Thus, any of this information within the submitted documents is not responsive to the present request. Accordingly, we do not address this information and it need not be released.

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. Common-law privacy protects information that (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 met. *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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that records relating to routine traffic violations are not considered criminal history record information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). This request, in part, is for unspecified records involving a named individual. As such, the request implicates this individual's right to privacy. Therefore, to the extent the sheriff maintains law enforcement records other than those pertaining to the two specified incidents or traffic offenses depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy.<sup>1</sup>

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the sheriff must withhold this information, which you have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses chapter 48 of the Human Resources Code, which regulates the investigation of abuse, neglect, or exploitation of an elderly or disabled person.<sup>2</sup> Section 48.101 makes the following information confidential:

- (1) a report of abuse, neglect, or exploitation made under [chapter 48];
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for the information at issue.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Hum. Res. Code § 48.101(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the Department of Family and Protective Services (“DFPS”) and certain other state agencies, depending on the circumstances surrounding the incident.<sup>3</sup> *See* Hum. Res. Code §§ 48.151, 48.152, 48.252, 48.301. Thus, records of a police department investigation generally are not subject to section 48.101. However, a portion of the information at issue consists of a report created by the DFPS that was used or developed in an investigation of neglect. Thus, we find that this report, which we have marked, is confidential under section 48.101, and must not be released to the public, except for a purpose consistent with chapter 48 of the Human Resources Code or as provided by a DFPS or investigating state agency rule or federal law. *See id.* § 48.101(b). *But see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances); 25 T.A.C. § 1.207.

Next, we address your claims under section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit C contains information related to a pending criminal investigation. Although you state that the Williamson County District Attorney’s office has prosecuted the case and a sentence was issued, you inform us only that “[t]he case remains subject to post-conviction litigation including an application for habeas corpus relief.” A mere chance of an appeal is not sufficient to demonstrate that release of the investigation at issue would interfere with prosecution or law enforcement efforts. Further, we note that a habeas corpus proceeding is a civil proceeding. Therefore, we conclude that you have failed to demonstrate how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Thus, the sheriff may not withhold any portion of Exhibit C under section 552.108(a)(1) or (b)(1) of the Government Code.

You also assert, however, that some of the submitted information should not be released on the basis of section 552.101 of the Government Code and common-law privacy. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 in conjunction with common-law privacy on a showing of “special circumstances.” This office considers such “special circumstances” to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face “an imminent threat of physical danger.” Open Records Decision No. 169 at 6 (1977). “Special circumstances” do not

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<sup>3</sup>In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

include “a generalized and speculative fear of harassment or retribution.” *Id.* The sheriff states that the release of the information identifying undercover peace officers would put these officers’ lives at risk. Based on this representation, and our review, we find that the sheriff must withhold information that identifies undercover peace officers under section 552.101 on the basis of common-law privacy and special circumstances.<sup>4</sup>

In summary, to the extent the sheriff maintains law enforcement records, other than those pertaining to the two specified incidents or routine traffic violations, in which the named individual is depicted as a suspect, arrestee, or criminal defendant, such information must be withheld under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the information it has marked under section 552.101 in conjunction with section 560.003 of the Government Code. The sheriff must withhold the information we have marked under section 552.101 in conjunction with section 48.101 of the Human Resources Code. Finally, the sheriff must withhold the information that identifies undercover peace officers under section 552.101 on the basis of common-law privacy and special circumstances. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>4</sup>As our ruling is dispositive for the information at issue, we need not address your remaining argument under section 552.117 of the Government Code.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Loan Hong-Turney  
Assistant Attorney General  
Open Records Division

LH/jb

Ref: ID# 292092

Enc. Submitted documents

c: Mr. Robert J. Bozelli  
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Dripping Springs, Texas 78620  
(w/o enclosures)