



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2007

Mr. David C. Newell  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

OR2007-13728

Dear Mr. Newell:

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# 292182.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for any and all records and offense or incident reports involving two named individuals and a specified address. You claim that the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 demonstrated. *Id.* at 681-82. A compilation of an

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor asks for all offense or incident reports involving two named individuals. Thus, these individuals' rights to privacy have been implicated, and any records pertaining to the named individuals as possible suspects, arrestees, or criminal defendants are generally required to be withheld under section 552.101 in conjunction with common-law privacy. *See id.*

We note that you have submitted information that does not list the named individuals as suspects, arrestees, or defendants. You assert that this information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report 07-14410 relates to a pending criminal investigation. Based on this representation, we conclude that release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of basic front-page offense and arrest information, the sheriff may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.

We note, however, that the requestor in this instance is an investigator with the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code allows, among other things, DFPS to obtain criminal history record information ("CHRI") concerning individuals who are the subjects of a report of abuse or neglect of a child. Gov't Code § 411.114(a)(4), (a)(2)(I). CHRI consists of "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 generally* Gov’t Code § 411.082(2). In this case, the requestor does not state that either of the two named individuals is a suspect in the report of abuse or neglect of a child. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the requested information, and we must rule conditionally. *See* Gov’t Code §411.114; *see also* Gov’t Code § 411.082(2). Therefore, provided that either of the two named individuals is a suspect in a report of abuse or neglect of a child, the sheriff must release information from the submitted documents pertaining to the named individual as a possible suspect, arrestee, or criminal defendant 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* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).<sup>3</sup> However, information pertaining to the named individuals as possible suspects, arrestees, or criminal defendants that does not show the type of allegation made or whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, or information pertaining to either named individual if the individual is not a suspect in the report of abuse or neglect of a child, must be withheld under section 552.101 and common-law privacy. *Cf. Reporters Comm.*, 489 U.S. 749.

In summary, provided that either of the two named individuals is a suspect in a report of abuse or neglect of a child, the sheriff must release information from the submitted documents pertaining to the named individual as a possible suspect, arrestee, or criminal defendant that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. If the individuals are not suspects in a report of abuse or neglect of a child, any records pertaining to the named individuals as possible suspects, arrestees, or criminal defendants must be withheld under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.<sup>4</sup>

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

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<sup>3</sup>We note that because the requestor may have a special right of access to this information in this instance, the sheriff must again seek a decision from this office if it receives another request for the same information from another requestor.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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).

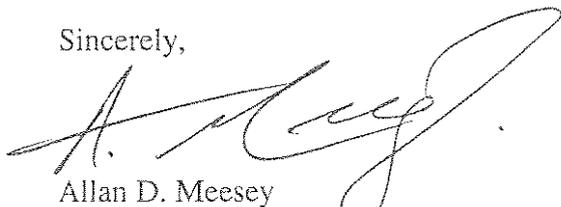
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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).

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,

A handwritten signature in black ink, appearing to read 'A. Meesey', written over a white background.

Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/eeg

Ref: ID# 292182

Enc. Submitted documents

c: Mr. Jerral W. Johnson  
Special Investigator  
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(w/o enclosures)