



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 4, 2008

Ms. D. Armstrong  
Administrative Assistant  
Criminal Division  
Hood County Sheriff's Office  
400 North Gordon  
Grandbury, Texas 76048

OR2008-01539

Dear Ms. Armstrong:

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# 301294.

The Hood County Sheriff's Office (the "sheriff") received a request for any and all police and arrest reports pertaining to an incarcerated individual regarding a specified arrest. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.115 of the Government Code. We have considered the exceptions 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 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 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. However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). The present request is for information pertaining to a particular incident that occurred on a specified date. The requestor does not seek a compilation of information for any specific individual. We therefore determine that the requested information is not confidential in its entirety as a compilation of criminal history information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that the submitted information does contain compilations of criminal history information, which we have marked, that the sheriff must withhold under section 552.101 in conjunction with common-law privacy. The rest of the report is of legitimate public interest, and thus the sheriff may not withhold the rest under common-law privacy.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). You state the submitted records contain a report of allegations of child abuse for purposes of chapter 261 of the Family Code. *See id.* § 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code). We therefore determine that the Department of Family and Protective Services' report is confidential under section 261.201. Accordingly, the sheriff must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

The submitted information includes fingerprint information that is subject to sections 559.001, 559.002, and 559.003 of the Government Code. These sections provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
  - (A) the individual consents to the disclosure;
  - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
  - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information to the requestor. Therefore, the sheriff must withhold this information, which we have marked, under section 559.003 of the Government Code.

You claim that the submitted certificate of death is subject to section 552.115 of the Government Code. Birth or death records maintained by the bureau of vital statistics of the Texas Department of State Health Services or a local registration official are excepted from required public disclosure under section 552.115. *Id.* § 552.115. However, because the sheriff is not the bureau of vital statistics or a local registration official, a death certificate

held by the sheriff may not be withheld under section 552.115. *See* Open Records Decision No. 338 (1982).

We also note that section 552.130 of the Government Code is applicable to some of the submitted information.<sup>1</sup> This section excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We have marked Texas driver's license information that the sheriff must withhold under section 552.130. Because this exception protects personal privacy, which is a personal right that lapses at death, the murder victim's Texas driver's license and motor vehicle information may not be withheld under section 552.130. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

In summary: (1) the marked criminal history information must be withheld under section 552.101 in conjunction with common-law privacy; (2) the information that we have marked under section 261.201 of the Family Code must be withheld under section 552.101 of the Government Code; (3) the fingerprint information, which we have marked, must be withheld under section 559.003 of the Government Code; and (4) the marked Texas driver's license information must be withheld under section 552.130 of the Government Code. The sheriff must release the remaining information to the requestor.<sup>2</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 governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

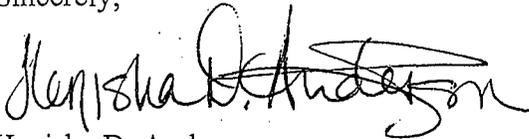
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/mcf

Ref: ID# 301294

Enc. Submitted documents

c: Ms. Lola McGill  
107 B Twining Drive  
Denison, Texas 75020  
(w/o enclosures)