



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2009

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, 1<sup>st</sup> Floor  
Conroe, Texas 77301

OR2009-00931

Dear Mr. Walker:

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# 332955.

The Montgomery County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified address and two named individuals since 2000. You claim that the 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." 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 of the Family Code. Section 58.007(c) provides as follows:

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 Subchapter B.

Fam. Code § 58.007(c). Some of the submitted documents contain information that involves juvenile conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appears to apply. Therefore, this information, which we have marked, is confidential pursuant to section 58.007(c) of the Family Code and the sheriff must withhold it under section 552.101 of the Government Code. However, the remaining information does not constitute juvenile law enforcement records for purposes of section 58.007. *See id.* §§ 51.02(2)(A) (for Title 3 of Family Code, "child" defined as person ten years of age or older and under seventeen years of age), 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return"). Thus, the sheriff may not withhold the remaining information under section 552.101 on that ground. *See id.* § 58.007(c).

Section 552.101 also encompasses the doctrine of common-law privacy, which 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 demonstrated. *Id.* at 681-82. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). In addition, a compilation of an individual's criminal history record information ("CHRI") 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.

The remaining information consists of missing person reports pertaining to a seventeen-year-old individual. This information does not depict either of the named individuals as a suspect, arrestee, or criminal defendant; therefore, this information does not consist of CHRI that must be withheld in its entirety under section 552.101 on that ground. However, we have marked medical and financial information that the sheriff must withhold under section 552.101 in conjunction with common-law privacy.

CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Therefore, the sheriff must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code.

The remaining information contains Texas motor vehicle record information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130.

To conclude, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, common-law privacy, and section 411.083 of the Government Code. The sheriff must also withhold the information we have marked under section 552.130 of the Government Code. The sheriff must release the remaining information.<sup>1</sup>

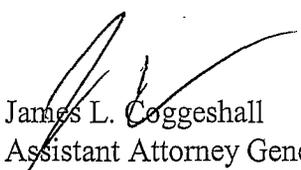
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<sup>1</sup>We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cc

Ref: ID# 332955

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)