



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 27, 2009

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

OR2009-15255

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# 359446.

The Williamson County Sheriff (the "sheriff") received a request for information related to (1) four named individuals and the requestor during a specified time period, (2) a specified address within the last three months, and (3) a specified incident. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 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." Gov't Code § 552.101. Section 552.101 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 the test must be established.

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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.

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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note that the requestor has a special right of access under section 552.023 of the Government Code to information that implicates his own privacy interests, and such information may not be withheld from this requestor on privacy grounds under section 552.101. *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987).<sup>2</sup>

The present request, in part, requires the sheriff to compile unspecified law enforcement records concerning the named individuals. Therefore, to the extent that the sheriff maintains law enforcement records depicting the named individuals, other than the requestor, as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note that the requestor also seeks information related to a specified incident and a particular address. Additionally, the submitted information contains reports that do not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the named individuals' common-law privacy concerns. Therefore, we will address your claimed exceptions for this information.

Section 552.101 also encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides, in part, as follows:

(a) [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.

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<sup>2</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Some of the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of child abuse under chapter 261 of the Family Code. *See* Fam. Code § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Therefore, we find the information at issue is generally confidential under section 261.201 of the Family Code.

We note that the requestor is the parent of some of the child victims listed in report numbers 00-09-00111 and 00-09-00112, and is not alleged to have committed the suspected abuse or neglect. In this instance, the sheriff may not use section 261.201(a) to withhold this information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(1), however, states that the personally identifiable information of any child victim who is not the requestor’s child must be withheld. *Id.* § 261.201(l)(1). Additionally, section 261.201(l)(2) of the Family Code states that information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 261.201(l)(2). Accordingly, we will consider the applicability of the other exceptions to disclosure that you raise for report

numbers 00-09-00111 and 00-09-00112. However, the requestor does not have a right of access under section 261.201(k) to report numbers 09-07-6637, 07-08-00588, and 05-07-3549; therefore, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>3</sup>

Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 Texas Department of Public Safety (the “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; however, 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 the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. We also note that an individual’s current involvement in the criminal justice system, including active warrant information, does not constitute CHRI. Upon review, we find that the information we have marked consists of CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, the remaining information at issue does not consist of CHRI for purposes of chapter 411. Therefore, none of the remaining information is confidential under section 411.083, and the sheriff may not withhold it under section 552.101 on that basis.

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. *See 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). The submitted fingerprint information is confidential under section 560.003; however, the requestor has a special right of access to his fingerprint information. *See id.* § 560.002(1). Therefore, the sheriff must release this information pursuant to section 560.002 of the Government Code. *See Open Records Decision Nos.* 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

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<sup>3</sup>As we reach this conclusion, we do not address your remaining claims for this information.

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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that report number 07-02-0964 relates to a pending criminal investigation. Based upon this representation and our review, we conclude that the 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) is applicable to report number 07-02-0964.

You claim section 552.108(a)(2) of the Government Code is applicable to some of the remaining reports. This section excepts from disclosure information concerning a criminal investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. You state that the information at issue relates to concluded investigations that did not result in conviction or deferred adjudication. Upon review, we agree that section 552.108(a)(2) is applicable to the information we have marked.

However, 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, you may withhold report number 07-02-0964 under section 552.108(a)(1) and the information we have marked under section 552.108(a)(2).<sup>4</sup> In releasing basic information, the sheriff must withhold any personally identifiable information of a child victim who is not the requestor’s child under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code.

You seek to withhold portions of the remaining submitted information under section 552.130 of the Government Code. Section 552.130 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). Because this exception protects personal privacy, the requestor has a right of access to his own Texas motor vehicle record information under section 552.023 of the Government Code, and the sheriff may not withhold the requestor’s information under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated

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<sup>4</sup>As our ruling is dispositive, we do not address your remaining claim for this information.

when individual requests information concerning self). We agree that the sheriff must withhold the Texas motor vehicle record information you have marked under section 552.130. We have marked some additional information that must be withheld under section 552.130.

You seek to withhold the names of undercover deputies from some of the remaining information. Section 552.151 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.<sup>5</sup>

Gov't Code § 552.151. You represent to this office that release of the names of the undercover deputies would "put their lives at risk." Based on your representation, we find that the sheriff has demonstrated that release of the information at issue would subject the deputies to a substantial threat of physical harm. We therefore conclude that the sheriff must withhold the names of undercover deputies, which you have marked, under section 552.151.<sup>6</sup>

In summary, to the extent the sheriff maintains law enforcement records depicting the named individuals, other than the requestor, as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy. The sheriff must withhold report numbers 09-07-6637, 07-08-00588, and 05-07-3549 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The information we have marked consists of CHRI that must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The requestor's fingerprint information must be released pursuant to section 560.002 of the Government Code. With the exception of the basic front page offense and arrest information, the sheriff may withhold report number 07-02-0964 under section 552.108(a)(1) of the Government Code and the information we have marked under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff must withhold any personally identifiable information of a child victim who is not the requestor's child under section 552.101 in conjunction with section 261.201(1)(1) of the Family Code. The sheriff must withhold (1) the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code, and (2) the names of undercover deputies,

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<sup>5</sup>The Office of the Attorney General will raise a mandatory exception like section 552.151 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>6</sup>As section 552.151 is dispositive, we do not address your remaining claim for this information.

which you have marked, under section 552.151 of the Government Code. The remaining information must be released.<sup>7</sup>

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 359446

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>7</sup>We note the remaining information being released contains confidential information to which the requestor has a right of access. See Fam. Code § 261.201(k), Gov't Code § 552.023. If the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office. Furthermore, we note the remaining 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. The requestor has a right, however, to his own social security number. See generally *id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).