



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 30, 2009

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

OR2009-18413

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# 365730.

The Williamson County Sheriff's Office (the "sheriff") received a request for all reports pertaining to a named individual and address and occurring over a specified period of time, including information relating to one specified incident. You claim portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.136, and 552.151 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 it (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 satisfied. *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. 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, 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).

In this instance, the request, in part, is for all reports pertaining to a named individual occurring over a specified time period. We find this portion of the request requires the sheriff to compile unspecified law enforcement records concerning the named individual. Such a request implicates the named individual's privacy rights. Thus, to the extent the sheriff maintains law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have submitted information that does not relate to the named individual as a suspect, arrestee, or criminal defendant. You have also submitted information that relates to a routine traffic violation. These reports do not implicate the privacy interests of the named individual. Thus, we will address your arguments against the disclosure of this information.

Section 552.101 encompasses information protected by other statutes, such as section 261.201(a) of the Family Code. Section 261.201(a) provides as follows:

(a) [T]he 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). Although you contend the report at issue is subject to section 261.201, we find that you have failed to adequately demonstrate how this information was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Consequently, the information at issue may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You argue some of the submitted information is protected by common-law privacy. As noted above, common-law privacy protects the specific types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has also found 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 identities of victims of sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where the requestor knows the identity of the individual at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. Here, although you seek to withhold some of the submitted reports in their entirety, you have not demonstrated, nor does it otherwise appear, this is a situation where the entire reports must be withheld on the basis of common-law privacy. However, upon review, we agree some of the submitted information is highly intimate and embarrassing and of no legitimate public interest. Therefore, the sheriff must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated any portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number C09-07-5544 relates to a pending criminal prosecution and report number C09-04-7746 relates to a pending criminal investigation. Based on your representations and our review, we conclude section 552.108(a)(1) is applicable to these reports. 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).

We note 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 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

However, you seek to withhold the name and identification number of an undercover officer from the basic information under section 552.151 of the Government Code. Section 552.151 provides in part:

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.

Gov't Code § 552.151. You represent release of the name and identification number of the undercover police officer would subject him to a "substantial threat of physical harm." Based on your representation, we find the sheriff has demonstrated release of this information would subject the officer to a substantial threat of physical harm. Therefore, apart from basic information, the sheriff may withhold report numbers C09-07-5544 and C09-04-7746 under section 552.108(a)(1) of the Government Code.<sup>1</sup> In releasing basic information, the sheriff must withhold the name and identification number of the undercover officer, which you have marked, under section 552.151 of the Government Code.

We note portions of the remaining information are subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides 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. *Id.* § 552.130(a)(1), (2). Thus, the sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>3</sup>

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Apart from basic information, the sheriff may withhold report numbers C09-07-5544

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<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).

<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

and C09-04-7746 under section 552.108(a)(1) of the Government Code. In releasing basic information, the sheriff must withhold the name and identification number of the undercover officer you marked under section 552.151 of the Government Code. The sheriff must also withhold the information we marked under section 552.130 of the Government Code. The remaining information must be released to this requestor.<sup>4</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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

Ref: ID# 365730

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the sheriff receives another request for this same information from a different requestor, then the sheriff should again seek a decision from this office. Further, 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. Gov't Code § 552.147.