



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
County of Fort Bend
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2010-16281

Dear Ms. Rangel:

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# 398774.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all records involving the requestor from January 1, 2007 to August 1, 2010. You state you will provide the requestor with a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 section 261.201(a) of the Family Code, which 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

¹We 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.

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). Upon review, we agree incident report numbers 07-5989, 07-17022, 08-3708, 08-3709, 08-9422, and 08-14992 are subject to section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *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). As you do not indicate that the sheriff has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, incident report numbers 07-5989, 07-17022, 08-3708, 08-3709, 08-9422, and 08-14992 are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Accordingly, the sheriff must withhold incident report numbers 07-5989, 07-17022, 08-3708, 08-3709, 08-9422, and 08-14992 under section 552.101 of the Government Code.² However, you have failed to demonstrate how incident report number 08-9505 consists of files, reports, records, communications, and working papers used or developed in an investigation under chapter 261. Thus, incident report number 08-9505 is not confidential under section 261.201(a) and may not be withheld on such basis under section 552.101 of the Government Code.

Section 552.108(a)(2) 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: (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in 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. *See id.* § 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report number 08-9505 is closed

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

as a voided case. Accordingly, we agree that section 552.108(a)(2) is applicable to incident report number 08-9505. Although you additionally state that incident report number 09-11348 is closed, you also state that it has been referred to the Justice of the Peace Court. Because this case was referred to the Justice of the Peace, you have failed to explain how this report pertains to a closed case that did not result in conviction or deferred adjudication. Therefore, we find that section 552.108(a)(2) is not applicable to incident report number 09-11348 and it may not be withheld on that basis.

As you acknowledge, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, the sheriff must release the types of basic information listed in *Houston Chronicle Publishing Company 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). With the exception of basic information, the sheriff may withhold incident report number 08-9505 pursuant to section 552.108(a)(2).

Section 552.101 also encompasses section 411.083 of the Government Code. Criminal history record information ("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 at 7 (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 the Department of Public Safety ("DPS") maintains, except 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 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the remaining information does not contain CHRI for purposes of chapter 411. Accordingly, none of the remaining information is confidential under chapter 411, and the sheriff may not withhold any of the remaining information under section 552.101 on that ground.

Section 552.101 of the Government Code 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 established. *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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find no portion of the remaining information constitutes a compilation of an individual's criminal history. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

We note incident report number 09-11348 contains driver's license information subject to section 552.130 of the Government Code, which excepts from disclosure information that relates to a driver's license issued by an agency of this state.³ *See Gov't Code* § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas driver's license information we have marked in incident report number 09-11348 under section 552.130 of the Government Code.⁴

In summary, the sheriff must withhold incident report numbers 07-5989, 07-17022, 08-3708, 08-3709, 08-9422, and 08-14992 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the sheriff may withhold incident report number 08-9505 pursuant to section 552.108(a)(2). The sheriff must withhold the Texas driver's license information we have marked in incident report number 09-11348 under section 552.130 of the Government Code. The remaining information must be released.⁵

³The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note Open Records Decision No. 684 (2009) authorizes a governmental body to redact a Texas driver's license number under section 552.130 of the Government Code without the necessity of requesting an attorney general decision.

⁵The information being released contains social security numbers that do not belong to the requestor. 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. We note the information being released also contains the requestor's social security number and Texas driver's license number. The requestor has a special right of access, however, to his own social security number and Texas driver's license number, which would otherwise be confidential with regard to the general public. *See Gov't Code* § 552.023(a). If the sheriff receives another request for this information from an individual other than the requestor, the sheriff is authorized to withhold the social security number under section 552.147 and the Texas driver's license number at issue under section 552.130 in accordance with Open Records Decision No. 684 without the necessity of requesting an attorney general decision.

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, 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/em

Ref: ID# 398774

Enc. Submitted documents

cc: Requestor
(w/o enclosures)