



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

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

OR2011-06445

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# 416945.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all reports and call slips from 2004 to the present pertaining to a specified address and any other reports regarding a named individual. You indicate the sheriff will provide the requested call slips to the requestor. You claim the submitted incident reports are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.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 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 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*

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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. The present request requires the sheriff to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual as 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.² We note you have submitted reports that pertain to the named individual, but do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, we will consider your claims under sections 552.101, 552.108, and 552.130 for these reports.

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

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . 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

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

of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Incident report numbers 11-2126 and 11-2191 reflect they were used or developed in an investigation of alleged child neglect. *See id.* § 261.001(4) (defining “neglect” for purposes of Fam. 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). Thus, we find these reports are within the scope of section 261.201(a) of the Family Code. In this instance, although the requestor is a parent of the child victim noted in the reports, the requestor is suspected of committing the alleged neglect. As such, these reports may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k) (stating child’s parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed abuse or neglect). Therefore, the sheriff must withhold incident report numbers 11-2191 and 11-2126 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 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 claiming section 552.108 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 state incident report numbers 09-33255, 08-17678, 05-8213, 05-8019, and 04-15144 pertain to pending criminal investigations. Based on your representation and our review, we determine release of these reports 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find report numbers 09-33255, 08-17678, 05-8213, 05-8019, and 04-15144 are subject to section 552.108(a)(1) 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 . . . 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an

³As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for this information.

exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Pruitt*, 551 S.W.2d 706. You assert incident report number 10-7534 pertains to a criminal investigation that did not result in a conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this report.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). We note, however, portions of the detailed descriptions of the offenses in report numbers 10-7534, 09-33255, 08-17678, 05-8213, and 05-8019 are subject to sections 552.130 and 552.136 of the Government Code.⁴

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). We have marked Texas driver's license numbers in report numbers 10-7534, 09-33255, 08-17678, 05-8213, and 05-8019. The sheriff must withhold this information under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Id. § 552.136. We have marked bank account numbers in incident report numbers 05-8213 and 05-8019. We conclude these bank account numbers constitute access device numbers for purposes of section 552.136. Thus, the sheriff must withhold the marked bank account

⁴The Office of the Attorney General will raise a mandatory exception, like section 552.136 of the Government Code, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

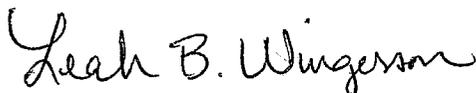
numbers under section 552.136 of the Government Code. The remaining basic information must be released.

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual as 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 incident report numbers 11-2191 and 11-2126 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 report numbers 09-33255, 08-17678, 05-8213, 05-8019, and 04-15144 under section 552.108(a)(1) of the Government Code and report number 10-7534 under section 552.108(a)(2) of the Government Code. In releasing the basic information from report numbers 10-7534, 09-33255, 08-17678, 05-8213, and 05-8019, the sheriff may not release the marked Texas driver's license numbers in report numbers 10-7534, 09-33255, 08-17678, 05-8213, and 05-8019 under section 552.130 of the Government Code and the marked bank account numbers in report numbers 05-8213 and 05-8019 under section 552.136 of the Government Code.⁵

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

⁵This office 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 numbers under section 552.130 of the Government Code and bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 416945

Enc. Submitted documents

c: Requestor
(w/o enclosures)