



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 17, 2011

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, Suite 100  
Conroe, Texas 77301

OR2011-06942

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# 417756 (Montgomery County ORR# 2011-1034).

The Montgomery County Sheriff's Department (the "sheriff") received a request for ten specified police reports, any reports relating to a specified protective order, and any other information or cases regarding a named individual. You state the sheriff will release some of the requested information. You claim that the remaining 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." Gov't Code § 552.101. This section encompasses the common-law right to 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 met. *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, noting 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. However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor, in part, asks the sheriff for any reports involving the named individual. We find this portion of the request requires the sheriff to compile unspecified law enforcement records concerning the named individual, thus implicating his right to privacy. Therefore, to the extent the sheriff maintains any law enforcement records in which the named individual is a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that you have submitted records in which the named individual is not a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the individual's criminal history, and may not be withheld under section 552.101 on this basis. Accordingly, we address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 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 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). We agree the reports in Exhibit B-2 were used or developed in investigations of alleged or suspected child abuse and fall within the scope of chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of the Family Code). As you do not state the sheriff has adopted a rule governing the release of this type of information, we assume none exists. Given this assumption, we conclude the sheriff must withhold the

reports in Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. You assert the information in Exhibit B-3 constitutes confidential polygraph results. Upon review, we conclude a portion of Exhibit B-3, which we have marked, constitutes information acquired from polygraph examinations that is subject to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the sheriff must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code. However, the remaining information in Exhibit B-3 does not consist of information acquired from polygraph examinations. The sheriff may not withhold any of the remaining

information in Exhibit B-3 under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

We note the remaining information in Exhibit B-3 contains Texas driver's license numbers. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state."<sup>1</sup> Gov't Code § 552.130(a)(1), (2). Accordingly, the sheriff must withhold the Texas driver's license numbers we have marked in the remaining information in Exhibit B-3 under section 552.130 of the Government Code.<sup>2</sup>

In summary, to the extent the sheriff maintains any law enforcement records in which the named individual is a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the reports in Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. The sheriff must withhold the information we have marked in Exhibit B-3 under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The sheriff must withhold the Texas driver's license numbers we marked in the remaining information in Exhibit B-3 under section 552.130 of the Government Code. The remaining information in Exhibit B-3 must be released.<sup>3</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,

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<sup>1</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. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note this 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, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the remaining information in Exhibit B-3 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. See Gov't Code § 552.147.

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,

A handwritten signature in black ink, appearing to read "Kate Hartfield". The signature is written in a cursive, flowing style.

Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 417756

Enc. Submitted documents

c: Requestor  
(w/o enclosures)