



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2011

Mr. Shain V. H. Chapman  
Mason County Attorney  
P.O. Box 157  
Mason, Texas 76856-0157

OR2011-08430

Dear Mr. Chapman:

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# 420443.

The Mason County Sheriff's Office (the "sheriff") received four requests from the same requestor for information related to four named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 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 courthouses 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. The requestor seeks "any and all records, videos, or reports that involve or are related to" the four named individuals. We find this request requires the sheriff to compile unspecified criminal history records concerning the individuals named in the requests and implicates the named individuals' right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy.

We note you have submitted records that do not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals and may not be withheld under section 552.101 as a compilation of the individuals' criminal history on the basis of common-law privacy. However, we will consider your arguments against the disclosure of this information.

Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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). Upon review, we find the information related to offense numbers 02-07-228 and 00-03-041 was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (defining "abuse" for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 of the Penal Code); *see also* Penal Code § 22.011 (defining "child" for purposes of sexual assault as a child as person under 17 years of age). You have not indicated the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information related to offense numbers 02-07-228 and 00-03-041 is confidential under section 261.201 of the Family Code and the sheriff must withhold it under section 552.101 of the Government Code. Upon review, we find none of the remaining information consists of reports of alleged or suspected abuse or neglect made

under chapter 261 of the Family Code; thus, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public[.]

*Id.* § 58.007(c). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). We note section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.007(c). Upon review, we find the remaining information does not involve a juvenile as a suspect, offender, or defendant. Accordingly, section 58.007 of the Family Code is not applicable. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

We note the remaining information contains a document that has been filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under “other law.” *See Gov’t Code* § 552.022(a)(17). Although you seek to withhold this document under section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver).* As such, section 552.108 is not “other law” that makes information expressly confidential for purposes of section 552.022(a)(17). Thus, the sheriff may not withhold the court-filed document under section 552.108 of the Government Code. However, we will consider your remaining claimed exceptions for this information.

Section 552.108(a)(2) excepts from disclosure information concerning an 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 a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); *Open Records Decision No. 434 at 2–3 (1986).* You state the following with regard to the information at issue: offense number 01-07-245F did not result in the arrest, conviction, or deferred adjudication of any person; offense numbers 02-04-148 and 05-01-0097 did not

result in any criminal charges and there was no conviction or deferred adjudication of any person; offense number 06-12-1807 did not result in the conviction or deferred adjudication of the suspect; and incident number 2009-1103 did not result in a conviction or deferred adjudication. Based on these representations and our review, we agree that section 552.108(a)(2) is applicable to the information at issue.

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that basic information does not include witness-identifying information or motor vehicle record information subject to section 552.130 of the Government Code. Accordingly, with the exception of basic information, the sheriff may withhold the information related to offense numbers 01-07-245F, 02-04-148, 05-01-0097, 06-12-1807, and incident number 2009-1103 under section 552.108(a)(2) of the Government Code.

As previously mentioned, section 552.101 encompasses the doctrine of common-law privacy. *Industrial Foundation*, 540 S.W.2d at 685. This office has found personal financial information that does not relate to a financial transaction between an individual and a governmental body is protected by common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). We note, however, the names, addresses, telephone numbers, and dates of birth of members of the public are not excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. The sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information you seek to withhold is not highly intimate or embarrassing and of no legitimate concern to the public; therefore, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 also encompasses the doctrine of constitutional privacy, which consists of two inter-related types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. See *Whalen v. Roe*, 429 U.S. 589, 599–600 (1977); Open Records Decision Nos. 600 at 3–5, 478 at 4 (1987), 455 at 3–7. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the

public's need to know information of public concern. *Id.* at 7. The scope of information protected by constitutional privacy is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find none of the remaining information is the kind protected by constitutional privacy. Thus, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See Open Records Decision No. 279 at 2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5*. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*. Upon review, we find the subject of the remaining information at issue in offense number 07-1504-10 knows the identity of the informer. Accordingly, the informer's privilege is not applicable, and the sheriff may not withhold this information under section 552.101 of the Government Code on that basis.

Section 552.130 excepts from disclosure information related 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. *See Gov't Code* § 552.130(a)(1), (2). The sheriff must withhold the information we have marked under section 552.130 of the Government Code.<sup>1</sup>

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Gov't Code* § 552.147.

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<sup>1</sup>This office has 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.

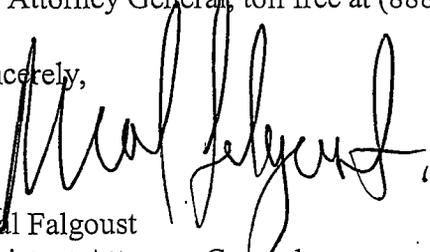
The sheriff may withhold the social security numbers we have marked under section 552.147 of the Government Code.<sup>2</sup>

In summary, to the extent the sheriff maintains law enforcement records that depict the named individuals 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. The sheriff must withhold the information related to offense numbers 02-07-228 and 00-03-041 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold the information related to offense numbers 01-07-245F, 02-04-148, 05-01-0097, 06-12-1807, and incident number 2009-1103 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the driver's license and license plate numbers we have marked under section 552.130 of the Government Code. The sheriff may withhold the social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released.

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

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<sup>2</sup>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.

Ref: ID# 420443

Enc. Submitted documents

c: Requestor  
(w/o enclosures)