



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2013

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

OR2013-01767

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# 477704.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for records pertaining to a named individual for specified periods of time. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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. 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

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.

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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor asks for all records pertaining to a named individual. This request requires the sheriff's office to compile unspecified law enforcement records concerning the named individual, thus implicating such individual's right to privacy. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that you have submitted reports which do not list the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual. Accordingly, we address your arguments for this information.

Section 552.101 also encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201 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.

Fam. Code § 261.201(a). Upon review, we find report number 08-17829 consists of a report used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (defining "abuse," for the purposes of chapter 261 of the Family Code as including offense of sexual assault under Penal Code section 22.011); Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.011 as person under 17 years of age). Accordingly, we determine report number 08-17829 is within the

scope of section 261.201 of the Family Code. You have not indicated that the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, report number 08-17829 is confidential pursuant to section 261.201 of the Family Code. Accordingly, the sheriff's office must withhold report number 08-17829 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

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). A governmental body claiming section 552.108(a)(2) must demonstrate 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). You state the remaining reports at issue did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to the remaining reports at issue.

We note, however, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record information subject to section 552.130 of the Government Code. Therefore, with the exception of basic information, the sheriff's office may withhold the remaining reports at issue under section 552.108(a)(2).³

In summary, to the extent the sheriff's office maintains law enforcement records that list the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold report number 08-17829 in its entirety 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's office may withhold the remaining reports at issue under section 552.108(a)(2) of the Government Code.

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

³Because our ruling as to these reports is dispositive, we do not address your remaining arguments against disclosure of portions of this information.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 477704

Enc. Submitted documents

cc: Requestor
(w/o enclosures)