



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

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

OR2013-18032

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# 502554.

The Fort Bend County Sheriff's Office (the "sheriff's office") received one request from two requestors for records involving the requestors and a named minor at a specified address from a specified period of time, including three specified reports. You state you are releasing some of the requested information to the requestors. You claim that the submitted 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

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the individuals named in the request or the specified reports. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.

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

Section 552.101 of the Government Code excepts "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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *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.

The request, in part, require the sheriff's office to compile unspecified law enforcement records concerning the requestors and the named minor and thus implicates these individuals' right to privacy. However, we note the requestors have a special right of access under section 552.023 of the Government Code to their own information that would otherwise be withheld to protect their privacy, to the extent that it exists. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, information relating to the requestors may not be withheld from themselves as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Further, we note the first requestor is the legal guardian of the named minor and, thus, has a special right of access to information that would ordinarily be withheld to protect the minor's common-law privacy. *See* Gov't Code § 552.023(b). Accordingly, information relating to named minor may not be withheld from the first requestor as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. However, to the extent the sheriff's office maintains any law enforcement records depicting the second requestor as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Further, to the extent the sheriff's office maintains any law enforcement records depicting the first requestor or the named minor as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, you have submitted information that was specifically requested or does not depict these individuals as suspects, arrestees, or criminal defendants. Thus, this information is not part of any individual's criminal history

compilation and may not be withheld under section 552.101 on this basis. Accordingly, we will consider your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as article 63.017 of the Code of Criminal Procedure, which provides the following:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. You contend the information at issue is confidential under article 63.017 of the Code of Criminal Procedure. For purposes of article 63.017, "clearinghouse" is defined as the missing children and missing persons information clearinghouse, which is established within the Texas Department of Public Safety. *Id.* arts. 63.001(7), .002(a). The submitted information consists of incident reports and the related call slips that were created by the sheriff's office. The incident reports and call slips are not clearinghouse records for purposes of article 63.017. Therefore, the sheriff's office may not withhold the information at issue under section 552.101 in conjunction with that article. *See id.* arts. 63.001(7), .002(a).

Section 552.101 of the Government Code also encompasses 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, other than the [Department of Family and Protective Services] or the Texas Youth Commission, 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 of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find some of the information at issue was used or developed in child abuse investigations conducted by the sheriff's office. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *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 this information is within the scope of section 261.201. Therefore, the information at issue, which we have marked, must be withheld from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note, however, the first requestor is the legal guardian of the child victim listed in the information at issue. However, this information reflects that the first requestor is alleged to have committed the abuse in some of the information subject to section 261.201. Therefore, this information may not be provided to the first requestor pursuant to section 261.201(k). *See id.* § 261.201(k). Accordingly, we find this information is confidential under section 261.201(a) of the Family Code, and the sheriff's office must withhold the information we have marked from the first requestor under section 552.101 of the Government Code.² However, the first requestor is not alleged to have committed the suspected abuse in the remaining information subject to section 261.201. Thus, pursuant to section 261.201(k), this information may not be withheld from this requestor on the basis of section 261.201(a). *See Id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.*

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

§ 261.201(l)(2). Accordingly, we will address your remaining arguments against disclosure of the information at issue.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. Section 58.007 provides in pertinent part as follows:

(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 and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act] or other law.

Id. § 58.007(c), (e), (j)(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we agree some of the information at issue involves juvenile conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, this information is generally confidential under section 58.007(c). Therefore, as it does not appear any of the exceptions in section 58.007 apply, the sheriff’s office must withhold the information we have marked from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, the first requestor is the legal guardian of the juvenile runaway listed in the information at issue. Therefore, this requestor has a right to inspect or copy information concerning the juvenile under section 58.007(e). *Id.* § 58.007(e). Accordingly, the sheriff’s office may not withhold the information at issue from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *See id.* We note, however, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted before the child’s parent or guardian may inspect or copy a record or file concerning the child. *Id.* § 58.007(j)(2). Accordingly, we will address the sheriff’s office’s remaining claims for this information.

Upon further review, some of the remaining information consists of a law enforcement record that appears to involve juvenile delinquent conduct that occurred after September 1, 1997. However, we are unable to determine the age of the offender in the information at issue. Accordingly, we must rule conditionally. It does not appear any of the exceptions in section 58.007 apply to this information. Thus, to the extent the offender in the information at issue was ten years of age or older and under seventeen years of age at the time the conduct occurred, the information is confidential pursuant to section 58.007(c) of the Family Code and must be withheld from the first requestor under section 552.101 of the Government Code. However, if the information at issue pertains to an offender who was not ten years of age or older and under seventeen years of age at the time the conduct occurred, this information may not be withheld from the first requestor under section 552.101 in conjunction with section 58.007(c) of the Family Code. In that event, we consider your remaining arguments for this information.

Section 552.108(a)(2) of the Government Code 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 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information relates to closed cases that concluded in results other than conviction

or deferred adjudication. Accordingly, we agree section 552.108(a)(2) is applicable to the remaining information.

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). 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*). Thus, with the exception of the basic information, the sheriff's office may withhold the remaining information from the first requestor under section 552.108(a)(2) of the Government Code.³

In summary, to the extent the sheriff's office maintains any law enforcement records depicting the second requestor as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the sheriff's office maintains any law enforcement records depicting the first requestor or the named minor as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked from the respective requestors under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the information we have marked from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent the offender in the information at issue was ten years of age or older and under seventeen years of age at the time the conduct occurred, the information is confidential pursuant to section 58.007(c) of the Family Code and must be withheld from the first requestor under section 552.101 of the Government Code. With the exception of the basic information, the sheriff's office may withhold the remaining information from the first requestor under section 552.108(a)(2) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 502554

Enc. Submitted documents

c: Requestor
(w/o enclosures)