



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2014

Ms. Michelle T. Rangel
Assistant Fort Bend County Attorney
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2014-13598

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# 531565.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information relating to three named individuals and the personnel records from a specified period of time for any police officers involved in any reported incidents relating to the three named individuals at a specified address during a specified time period. You state the sheriff's office will release some of the requested information. You claim 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 information.

Initially, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officers' TCOLE identification numbers

in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.

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) (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. Upon review, we find the present request, in part, requires the sheriff’s office to compile unspecified law enforcement records concerning the named individuals. Accordingly, we find the request implicates the named individuals’ rights to privacy. Therefore, to the extent the sheriff’s office maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff’s office must withhold such information under section 552.101 in conjunction with common-law privacy.¹ We note, however, the remaining requested information does not consist of criminal records. This information does not implicate the privacy interests of the named individuals. Thus, this information may not be withheld under section 552.101 in conjunction with common-law privacy as a criminal history compilation. Accordingly, we will 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, 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:

¹As our ruling is dispositive, we need not address your argument under section 552.108 of the Government Code.

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You contend the information in Exhibit E is confidential under section 261.201. We note, however, the information at issue consists of internal records relating to commendations of police officers. Upon review, we find you have failed to demonstrate the information at issue involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 or how the information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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). Therefore, the sheriff’s office may not withhold the information in Exhibit E under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the [TCOLE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Id. § 1701.454. The information in Exhibit F contains F-5 Reports of Separation of Licensee. The information at issue does not indicate the individuals at issue resigned or were terminated for reasons other than substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff’s office must withhold the submitted F-5 reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, we find the remaining information at issue does not consist of information that was submitted to TCOLE pursuant to subchapter J of

chapter 1701 of the Occupations Code. Therefore, the sheriff's office may not withhold any of the remaining information in Exhibit F under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

As stated above, section 552.101 of the Government Code 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.*, 540 S.W.2d at 685. This office has also found common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). (legislature chose to protect law enforcement records of a child who is ten years of age or older and under 17 years of age at the time of the reported conduct).

Upon review, we find some of the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we are unable to determine the age of the juvenile offender at issue. Accordingly, we must rule conditionally for the additional information we have marked. If the juvenile offender at issue was ten years of age or older and under seventeen years of age at the time of the reported conduct, then the additional information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*, and must be withheld under section 552.101 in conjunction with common-law privacy. If the juvenile offender at issue was not ten years of age or older and under seventeen years of age at the time of the reported conduct, then the additional information we have marked is not highly intimate or embarrassing and of no legitimate public interest, and may not be withheld under section 552.101 in conjunction with common-law privacy. Further, we find you have failed to demonstrate the remaining information in Exhibit D is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information in Exhibit D may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the sheriff's office maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 in conjunction with common-law privacy. The sheriff's office must withhold the submitted F-5 reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the juvenile offender at issue was ten years of age or older and under seventeen years of age at the time of the reported conduct, then the sheriff's office must withhold the additional information we have marked under section 552.101

in conjunction with common-law privacy. The sheriff's office must release the remaining 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.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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 531565

Enc. Submitted documents

c: Requestor
(w/o enclosures)