



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 24, 2015

Mr. Vance Hinds  
Assistant County and District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 75165

OR2015-05614

Dear Mr. Hinds:

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# 557200.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all police reports involving a named individual. 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.

You argue that responding to this request will require the sheriff's office to compile an individual's criminal history. 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) (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, a compilation of a private

citizen's criminal history is generally not of legitimate concern to the public. Upon review of the information at issue, we find the individual named in the request is not listed as a criminal arrestee, suspect, or defendant in any of the reports. Accordingly, this information does not represent a compilation of the named individual's criminal history, and the sheriff's office may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 [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). You state case numbers 13-00639 and 13-11681 concern investigations into allegations of child abuse. *See id.* § 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). You have not indicated the sheriff's office has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the reports related to case numbers 13-00639 and 13-11681 are confidential under section 261.201 of the Family Code and the sheriff's office must withhold them under section 552.101 of the Government Code.<sup>1</sup>

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime [or]

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<sup>1</sup>This ruling is dispositive of your other claimed exceptions for this report.

(2) 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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code §§ 552.108(a)(1)–(2), (b)(1)–(2). As a general rule, the protections afforded by sections 552.108(a)(1) and (b)(1) and sections 552.108(a)(2) and (b)(2) are mutually exclusive. Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, sections 552.108(a)(2) and (b)(2) protect law enforcement records pertaining to a criminal investigation or prosecution that concluded in a final result other than a conviction or a deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You raise both sections 552.108(a)(1) and (b)(1) and sections 552.108(a)(2) and (b)(2). You have marked the report related to case number 11-08856 as subject to section 552.108, but you have not explained whether this case relates to an active investigation or prosecution or if it concerns a closed investigation that did not result in conviction or deferred adjudication. Thus, we conclude you have not demonstrated the applicability of section 552.108 of the Government Code to this report, and the sheriff's office may not withhold it on that basis.

You do explain the report related to case number 11-08855 concerns a case that was investigated but no charges were filed. Thus, the investigation has concluded in a result other than conviction or deferred adjudication. Accordingly, we conclude section 552.108(a)(2) of the Government Code applies to the report for case number 11-08855. 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). This information includes, but is not limited to, a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the sheriff's office may withhold the report related to case number 11-08855 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the sheriff's office must withhold the information you marked in the report related to case number 11-08856 under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the reports related to case numbers 13-00639 and 13-11681 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 report related to case number 11-08855 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information you marked in the report related to case number 11-08856 under section 552.130 of the Government Code. 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/bhf

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<sup>2</sup>This ruling is dispositive of your other claimed exceptions for this report.

Ref: ID# 557200

Enc. Submitted documents

c: Requestor  
(w/o enclosures)