



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2015

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

OR2015-06099

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# 558004.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for police reports filed by a named individual against the requestor pertaining to a specified incident, and all reports during a specified time period pertaining to a specified address. 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 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 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

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.

demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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. You claim the submitted information is a compilation of criminal records. However, we note the request is for information pertaining to a specified incident and a specified address. Thus, we find this request does not require the sheriff's office to compile an individual's criminal history and does not implicate the privacy interests of an individual. Accordingly, the sheriff's office may not withhold the submitted information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

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

(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 . . . 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.

Fam. Code § 261.201(a), (k). Upon review, we find report number 12-20051 and call slip number P122050242 were used or developed in investigations under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 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, this information is within the scope of section 261.201. In this instance, although the requestor is a parent of the child victims listed in the information at issue, the requestor is suspected of having committed the alleged abuse or neglect. As such, this information may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k) (stating child’s parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed abuse or neglect). Therefore, the sheriff’s office must withhold report number 12-20051 and call slip number P122050242 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We note the remaining information at issue relates to custody disputes. Thus, we find none of the remaining information at issue is confidential under section 261.201 of the Family Code and it may not 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. 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.

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

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See id.* § 51.02(2).

You state call slip number P123060183 relates to juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. However, we are unable to determine the age of the alleged offender. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Thus, to the extent the offender was ten years of age or older and under seventeen years of age at the time of the conduct at issue, call slip number P123060183 is confidential under section 58.007(c) of the Family Code, and the sheriff’s office must withhold the information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.³ However, to the extent the offender was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the information at issue is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis.

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 report numbers 13-8639, 13-15600, 12-3133, 11-31003, and call slip numbers P130910493, P131580740, P120340704, and P113300294 pertain to closed cases. Thus, you state this information pertains to investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to report numbers 13-8639, 13-15600, 12-3133, 11-31003, and call slip numbers P130910493, P131580740, P120340704, and P113300294.

However, section 552.108 does not except from disclosure basic information about 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff’s office

³In this instance, our ruling is dispositive and we need not consider your remaining arguments against disclosure of this information.

may withhold report numbers 13-8639, 13-15600, 12-3133, 11-31003, and call slip numbers P130910493, P131580740, P120340704, and P113300294 under section 552.108(a)(2) of the Government Code.⁴

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Open Records Decision No. 565 at 7 (1990)*. Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. Upon review, we find you have failed to demonstrate how any portion of the remaining information constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

In summary, the sheriff’s office must withhold report number 12-20051 and call slip number P122050242 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the offender in call slip number P123060183 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the sheriff’s office must withhold call slip number P123060183 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the sheriff’s office may withhold report numbers 13-8639, 13-15600, 12-3133, 11-31003, and call slip numbers P130910493, P131580740, P120340704, and P113300294 under section 552.108(a)(2) of the Government Code. The sheriff’s office must release the remaining information.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure 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.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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 558004

Enc. Submitted documents

c: Requestor
(w/o enclosures)