



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2015

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

OR2015-07170

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# 559876.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all calls for service and incident reports associated with a specified address, as well as all incident reports related to a named individual. 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 exceptions you claim and reviewed the submitted information.

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 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. This office has found 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. United States 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks unspecified law enforcement records pertaining to a named individual. We find this request for unspecified law enforcement records implicates the individual's right to privacy. Therefore, to the extent the sheriff's office maintains 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, you have submitted information in which the named individual is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate the named individual's right to privacy. Accordingly, we will consider your arguments for this information.

The doctrine of common-law privacy also excepts the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. See 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the information in report number 12-15021 reveals the requestor knows the identity of the individual involved as well as the nature of the information in the report at issue. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold report number 12-15021 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹ Additionally, we find some of the remaining information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

Section 552.101 of the Government Code also encompasses information made confidential by 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 some of the remaining information 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 information at issue consists of an incident report created by the sheriff’s office. The incident report is not a clearinghouse record for purposes of article 63.017. Therefore, the sheriff’s office may not withhold any of the remaining information 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 58.007 of the Family Code, which provides, in pertinent part:

(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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to juvenile delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03 (defining “delinquent conduct”). 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 reported conduct. *See id.* § 51.02(2). Report numbers 11-14100 and 11-18764 involve

children engaged in delinquent conduct that occurred after September 1, 1997. Thus, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). Upon review, we find the sheriff's office must withhold report numbers 11-14100 and 11-18764 under section 552.101 of the Government Code in conjunction with 58.007(c) of the Family Code.²

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], Government Code, 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.

Id. § 261.201(a). Upon review, we find report number 11-02953 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); *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). Thus, this information is subject to section 261.201 of the Family Code. We have no indication the sheriff's office has adopted a rule governing the release of this type of information; thus, we assume no such regulation exists. Given that assumption, report number 11-02953 is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.³

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 information at issue relates to a criminal investigation that has concluded in a final result other than conviction

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

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or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state report numbers 08-24771, 10-21511, 11-14101, 11-14102, 13-14701, 14-17998, 14-19512, 14-26012, 14-31211, and 14-35396 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, which the sheriff's office must release, the sheriff's office may withhold report numbers 08-24771, 10-21511, 11-14101, 11-14102, 13-14701, 14-17998, 14-19512, 14-26012, 14-31211, and 14-35396 under section 552.108(a)(2) of the Government Code.

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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F 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 not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find none of the remaining information consists of CHRI for the purposes of chapter 411 of the Government Code. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). The sheriff's office must

withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold report number 12-15021 in its entirety, as well as the information we have marked in the remaining information, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold report numbers 11-14100 and 11-18764 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The sheriff's office must withhold report number 11-02953 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 report numbers report numbers 08-24771, 10-21511, 11-14101, 11-14102, 13-14701, 14-17998, 14-19512, 14-26012, 14-31211, and 14-35396 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.⁴

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

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⁴We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code §§ 552.023(a), .130; Open Records Decision No. 481 at 4 (1987). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Ref: ID# 559876

Enc. Submitted documents

c: Requestor
(w/o enclosures)