



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2015

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

OR2015-07905

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# 561045.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for all information related to a specified address involving certain named individuals, including the requestor, during a specified time period. You state you have released some information to the requestor. 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 "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 other than the requestor. We find this part of the request generally implicates the other named individuals' rights to privacy. However, we note the requestor also asks for all information held by the sheriff's office concerning herself. This part of the request seeks specified records involving the requestor. Further, the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).* Therefore, information relating to the requestor may not be withheld from her as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the reports involving the requestor, to the extent the sheriff's office maintains law enforcement records depicting any of the other 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. We note, however, you have submitted reports which do not list the named individuals as suspects, arrestees, or criminal defendants. 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.

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:

(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 the information you have indicated was used or developed in child abuse or neglect investigations conducted by the sheriff's office. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of 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 disabilities of minority removed for general purposes). Thus, we find this information is within the scope of section 261.201. We note the requestor is a parent of the child victim listed in the information at issue. However, the requestor is alleged to have committed the abuse in the reports we have marked. Therefore, the reports we have marked may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). Accordingly, we find the information we have marked is confidential under section 261.201(a) of the Family Code, and the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code.¹ However, the requestor is not alleged to have committed the suspected abuse in report numbers 12-376 and 13-21491. Thus, pursuant to section 261.201(k), report numbers 12-376 and 13-21491 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.* § 261.201(l)(2). Accordingly, we will address your remaining arguments against disclosure of the information at issue.

Next, we note report number 10-1007 involves an alleged violation of section 32.51 of the Penal Code, which provides "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person's consent[.]"

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Penal Code § 32.51(b)(1). For purposes of section 32.51, “identifying information” includes an individual’s financial institution account number. *Id.* § 32.51(a)(1)(C). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides as follows:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim’s request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005, if no “element of the offense occurs before that date.” Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, report number 10-1007 pertains to a check forgery investigation, which constitutes an alleged violation of section 32.51. We note the requestor is the victim of the alleged identity theft listed in the report, and the alleged offense occurred after September 1, 2005. Therefore, the report at issue is subject to article 2.29 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.29. Although you seek to withhold report number 10-1007 under section 552.108 of the Government Code, this exception does not make information confidential. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the sheriff’s office may not withhold report number 10-1007 under section 552.108 of the Government Code. However, you also raise section 552.130 of the Government Code, which makes information confidential for purposes of article 2.29. Accordingly, we will address the applicability of section 552.130. Further, we will address your argument under section 552.108 of the Government Code for the remaining 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the remaining information at issue pertains to closed investigations that did not result in convictions or deferred adjudications. Based on this representation, we conclude section 552.108(a)(2) of the Government Code is applicable to the remaining information at issue.

However, section 552.108 does not except from disclosure basic information about 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code. *See id.* Thus, with the exception of basic information and report number 10-1007, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.²

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. Upon review, we find portions of the remaining information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find you have not demonstrated any of the remaining information is subject to section 552.130. Accordingly, the sheriff's office may not withhold the remaining information on that basis.

In summary, with the exception of the reports involving the requestor, to the extent the sheriff's office maintains law enforcement records depicting any of the other 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 information we have marked section 552.101 of the

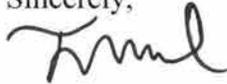
²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information and report number 10-1007, the sheriff's office may withhold the remaining information 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.³

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 561045

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released includes an individual's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). However, the requestor has a right of access to her social security number under section 552.023 of the Government Code. *See generally id.* § 552.023(a); ORD 481 at 4. We also note the requestor has a right of access to some of the additional information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must seek another ruling from this office.