



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 18, 2015

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, Third Floor  
Richmond, Texas 77469

OR2015-09618

Dear Mr. Grove:

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# 563888.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports where the police were called to a specified address involving a named individual, including the report on a specified incident. The sheriff's office states it will release some information. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from public 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 demonstrate the applicability of common-law privacy, both prongs of this test must be

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<sup>1</sup>We 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 those records contain substantially different types of information than that submitted to this office.

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. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note the submitted information does not list the named individual as a suspect, arrestee, or criminal defendant. Therefore, this information does not consist of a compilation of the named individual's criminal history and thus, the sheriff's office may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis.

Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code which provides, in relevant 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). For purposes of section 58.007(c), a "child" is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.*, § 51.02(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Upon review, we find report number 13-32526 involves a juvenile engaged in delinquent conduct on or after September 1, 1997. It does not appear that any of the exceptions to confidentiality under

section 58.007 of the Family Code apply to this information. Thus, report number 13-32526 is confidential under section 58.007(c) of the Family Code, and the sheriff's office must withhold it under section 552.101 of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, 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.

Fam. Code § 261.201(a). Upon review, we find report number 14-26742 consists of information used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We have no indication the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude report number 14-26742 is confidential pursuant to section 261.201 of the Family Code, and the sheriff's office must withhold it under section 552.101 of the Government Code.<sup>3</sup> *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

In summary, the sheriff's office must withhold report number 13-32526 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The sheriff's office must withhold report number 14-26742 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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<sup>2</sup>As our ruling is dispositive, we need not address the sheriff's office's remaining arguments against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address the sheriff's office's 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 563888

Enc. Submitted documents

c: Requestor  
(w/o enclosures)