



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 3, 2015

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

OR2015-15864

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# 573888.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all police reports in which the requestor's client filed a complaint against a named individual, all information related to a specified address, and all information 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.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-10255 (2015). In Open Records Letter No. 2015-10255, we determined the sheriff's office must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In the instant request, however, the requestor is the authorized representative of a parent of the child victims listed in the information and was not suspected of committing the alleged abuse. Accordingly, this requestor has a special right of access to information pertaining to her client's children under section 261.201(k) of the Family Code. Thus, we find the circumstances have changed in regard to this information and the sheriff's office may not rely on Open Records Letter No. 2015-10255 as a previous determination in this instance. *See*

Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

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 individual. Accordingly, we find the request implicates the named individual’s right to privacy. Therefore, to the extent the sheriff’s office maintains unspecified 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 in conjunction with common-law privacy. We note, however, the sheriff’s office has submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant, or consists of records specifically requested by the requestor. This information does not implicate the privacy interests of the named individual. Thus, the sheriff’s office may not withhold this information 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. Section 261.201 of the Family Code provides:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas 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). You state some of the submitted information consists of information that was used or developed in an alleged or suspected child abuse investigation. *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 this section 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. However, as previously noted, the requestor is the authorized representative of a parent of the child victims to which the information at issue relates, and the parent is not alleged to have committed the abuse. *See id.* § 261.201(k). Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a) of the Government Code. Section 261.201(l)(2) provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(l)(2). Thus, we will address the sheriff’s office’s remaining arguments against disclosure for the information at issue.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state portions of the submitted information relate to pending criminal investigations or prosecutions. Based on this representation, we conclude the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the information at issue and the sheriff’s office may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). 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 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the information we have marked consists of CHRI the sheriff’s office must withhold under

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

section 552.101 in conjunction with section 411.083 of the Government Code and federal law.<sup>2</sup>

You claim some of the remaining information is confidential under section 552.101 of the Government Code in conjunction with the federal Driver's Privacy Protection Act of 1994 (the "DPPA"), section 2721 of title 18 of the United States Code. Section 2721 provides, in part, the following:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

(b) Permissible uses.—Personal information referred to in subsection (a) . . . and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions.

. . .

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

18 U.S.C. § 2721(a), (b)(1), (c). Section 2721(a) is applicable to state departments of motor vehicles. *See id.* § 2721(a). Pursuant to section 2721(b), personal information may be disclosed to certain entities by a state department of motor vehicles. *See id.* § 2721(b). However, we find the sheriff's office is not a state department of motor vehicles. Further, we find the sheriff's office does not assert it received the information at issue from a state department of motor vehicles. Therefore, the sheriff's office has failed to demonstrate any of the remaining information is subject to section 2721(a) of the DPPA. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides, "[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. Section 730.004 applies only to an "agency" that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the sheriff's office compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the sheriff's office and the sheriff's office may not withhold any of the remaining information under section 552.101 on that 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 in the remaining information under section 552.130 of the Government Code. However, no portion of the remaining information consists of motor vehicle information subject to section 552.130 of the Government Code, and it may not be withheld on that basis.

In summary, 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 in conjunction with common-law privacy. The sheriff's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code and federal law. The sheriff's office must withhold the motor vehicle record information we have marked in the remaining information 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,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a long horizontal flourish extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 573888

Enc. Submitted documents

c: Requestor  
(w/o enclosures)