



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2015

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

OR2015-21649

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# 583410

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to five specified reports and all records of five named individuals and the requestor. You state the sheriff's office will release some information. You state the sheriff's office does not possess information responsive to portions of the request.¹ 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 information.²

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."

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

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) (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. Further, 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. 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. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have submitted documents that do not list the named individuals as suspects, arrestees, or criminal defendants. In addition, the requestor asks for specified reports. Because the requestor specifically asks for this information, it is not part of a compilation of the individuals' criminal histories. Therefore, this information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

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

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). Although you claim report numbers 12-33140, P123420565, and P2350297 are confidential under section 261.201, we note the information at issue relates to child custody disputes and does not relate to investigations that were conducted under chapter 261 of the Family Code. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (to be codified as an amendment to Fam. Code § 261.001(1)); Act of May 21, 2015, 84th Leg., R.S., ch. 432, § 1, 2015 Tex. Sess. Law Serv. 1686, 1686-87 (to be codified as an amendment to Fam. Code § 261.001(4)) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also* Fam. Code § 101.003(a) (defining “child” for purposes of chapter 261). Accordingly, the sheriff’s office may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

Section 552.108(a)(1) 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 . . . 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 requested information 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 (Tex. 1977). You state report number 10-24358 relates to a pending criminal case. Based on your representation and our review, we find the release of the information at issue 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 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that 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 the information related to report numbers 12-33140 and 14-5425 relates to closed cases that did not result in conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information related to report numbers 12-33140 and 14-5425.

We note, 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 front-page information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87;

Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include information subject to section 552.130 of the Government Code. *See* ORD 127. Thus, with the exception of the basic information, the sheriff's office may withhold report number 10-24358 under section 552.108(a)(1) of the Government Code and the information related to report numbers 12-33140 and 14-5425 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individuals other than the requestor as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, the sheriff's office may withhold report number 10-24358 under section 552.108(a)(1) of the Government Code and the information related to report numbers 12-33140 and 14-5425 under section 552.108(a)(2) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 583410

Enc. Submitted documents

cc: Requestor
(w/o enclosures)