



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2005

Ms. Julie Joe
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767

OR2005-07369

Dear Ms. Joe:

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# 230579.

The Travis County Sheriff's Office (the "sheriff") received a request for a specific report and copies of any sheriff or police reports involving the requestor and six named persons. You state that you have released some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that you did not submit the requested report No. 05-1498 for our review. As you have not submitted that report for our review, we assume you have released it to the extent that it existed at the time you received this request. If you have not released any such records, you must release them to the requestor at this time. *See Gov't Code §§ 552.301(a), .302.; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

Next, we note, and you acknowledge, that the sheriff has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless a compelling reason exists for withholding the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). In this instance, because you contend that the requested information is made confidential by other law, we will consider your arguments for non-disclosure.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses the doctrine of common-law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, requests for specific reports or for reports relating to a particular incident do not require a governmental body to compile unspecified records and thus do not implicate the privacy concerns expressed in *Reporters Committee*. Additionally, reports that involve the individual solely as a victim, witness, or involved person are not private under the holding in *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor asks for all sheriff and police reports concerning herself and certain other persons. To the extent the requestor asks the sheriff to compile information about other individuals, those individuals' rights to privacy are implicated. Thus, if the sheriff has any records in which the named individuals other than the requestor are portrayed as suspects, defendants, or arrestees, the sheriff must withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that the requestor has a special right of access to a compilation of her own criminal history, to the extent that it exists. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles).

Section 552.101 also encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(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 Subchapter B.

Some of the information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information we have marked from disclosure under section 552.101 of the Government Code.

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

(a) The 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption,

the documents we have marked are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.² Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation of child abuse, the sheriff must not release front page offense report information in cases of alleged child abuse.

The submitted information also contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the sheriff must withhold the Texas motor vehicle record information you have marked.

Finally, we note that the submitted information contains social security numbers. Section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the sheriff must withhold the social security numbers contained in the submitted information under section 552.147.⁴

In summary, to the extent that the sheriff maintains records in which the named individuals other than the requestor are identified as a suspects, defendants, or arrestees, the sheriff must withhold this information under common-law privacy as encompassed by section 552.101. The sheriff must withhold the information we have marked pursuant to section 58.007(c) of the Family Code in conjunction with section 552.101. The sheriff must withhold the information we have marked pursuant to section 261.201 of the Family Code in conjunction with section 552.101. In accordance with section 552.130, the sheriff must withhold the Texas motor vehicle record information you have marked. The sheriff must withhold the

²We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child’s parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

⁴We note that 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 under the Act.

social security numbers contained in the submitted information under section 552.147. The remaining information must be released.⁵

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

⁵Because the records being released contain information relating to the requestor that would be excepted from disclosure to the general public in order to protect the requestor's privacy, the sheriff must request another ruling from our office if it receives a future request for this information from an individual other than this requestor or her authorized representative. See Gov't Code § 552.023(b).

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'José Vela III', written in a cursive style.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 230579

Enc. Submitted documents

c: Denise Hodes
11506 Morning Sun Dr.
Austin, Texas 78737
(w/o enclosures)