



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2006

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

OR2006-11459

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# 260945.

The Travis County Sheriff's Office (the "sheriff's office") received a request for any and all records pertaining to a named individual. You claim that the requested 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, a portion of which you state is a representative sample.¹

Section 552.101 of the Government Code excepts from disclosure "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 if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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

¹We assume that 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.

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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the requestor seeks all records pertaining to a named individual. As such, this request implicates the named individual's right to privacy. Therefore, 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.

You claim that incident report number 020007359 is confidential under section 261.201 of the Family Code. Section 552.101 also encompasses section 261.201. Section 261.201(a) of the Family Code 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.

Family Code § 261.201(a). Upon review, we agree that incident report number 020007359 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code, ch. 261). Thus, this information is within the scope of section 261.201 of the Family Code. You have not indicated that the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume that no such rule exists. Accordingly, we find that incident report number 020007359 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*²

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

You raise section 552.108 of the Government Code for incident report numbers 050033446, 040031761, and 01-25269. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. You state that incident report numbers 050033446, 040031761, and 01-25269 pertain to closed criminal investigations that did not result in convictions or deferred adjudications. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam). Thus, with the exception of the basic front page offense and arrest information, the sheriff's office may withhold incident report numbers 050033446, 040031761, and 01-25269 under section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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 must withhold incident report number 020007359 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the sheriff's office may withhold incident report numbers 050033446, 040031761, and 01-25269 under section 552.108(a)(2) of the Government Code.³

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

reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

³As our ruling is dispositive, we need not address your remaining argument under section 552.101 of the Government Code.

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 complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General 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. 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ms. Julie Joe - Page 5

Ref: ID# 260945

Enc. Submitted documents

c: Ms. Shirley Johns
14319 Lun Carlson
Copeland, Texas 78615
(w/o enclosures)