



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2007

Ms. Katie Lentz
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2007-11382

Dear Ms. Lentz:

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# 288932.

The Williamson County Sheriff's Office (the "sheriff") received a request for information pertaining to two specified incidents. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning a criminal investigation that concluded in a result other than 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. You state that Exhibit B pertains to a case where the criminal charges were dismissed; therefore, the case concluded in a result other than conviction or deferred adjudication. We, therefore, agree that section 552.108(a)(2) is applicable to Exhibit B.

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 information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531

¹We note that the requestor agreed to the redaction of any social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers. Therefore, the sheriff need not release this information and this ruling does not address this information.

S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note that portions of the basic information in Exhibit B are excepted from disclosure under section 552.101 of the Government Code. 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 common-law privacy. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Indust. 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 the test must be satisfied. *Id.* At 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review of Exhibit B, we find that portions of the basic information constitute highly intimate or embarrassing information in which there is no public interest. Accordingly, the types of basic information we have marked must be withheld by the sheriff.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

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.

Fam. Code § 261.201(a). The submitted incident report in Exhibit C was an investigation of a disturbance and not an investigation of child abuse or neglect conducted under chapter 261; therefore, it was not used or developed in an investigation under chapter 261. Although Child Protective Services (“CPS”) was notified, the sheriff has not explained that the report was used by CPS in its investigation conducted under chapter 261. Thus, the incident report in Exhibit C is not within the scope of section 261.201 of the Family Code. However, the remaining information in Exhibit C consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information, which we have marked, is within the scope of section 261.201

of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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”), 261.001(1)(c) (definition of “child abuse” includes “physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child”). You do not inform us that the sheriff has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the information we have marked is confidential pursuant to section 261.201 of the Family Code, and that the sheriff must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses chapter 411 of the Government Code. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. 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 law 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 the 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, 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. However, we note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See* Gov’t Code § 411.082(2)(b) (definition of CHRI does not include driving record information). We have marked the information that constitutes CHRI generated by TCIC and NCIC and is confidential under section 411.083.² Therefore, the information we have marked must be withheld under section 552.101 of the Government Code.³

In summary, with the exception of basic information, the sheriff may withhold Exhibit B under section 552.108(a)(2). The sheriff must, however, withhold the basic information we have marked in Exhibit B under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the information we have marked in Exhibit C under

²We note that the requestor can obtain her own CHRI from DPS. Gov’t Code § 411.083(b)(3).

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 552.101 in conjunction with section 261.201 of the Family Code. The sheriff also must withhold the criminal history record information we have marked in Exhibit C under section 552.101 in conjunction with section 411.083 of the Government Code. The remaining information must be released to the requestor.

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).

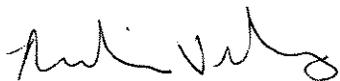
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 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,

A handwritten signature in black ink, appearing to read 'Melanie J. Villars', with a stylized flourish at the end.

Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 288932

Enc. Submitted documents

c: Ms. Bonnie J. Mroz
17003 FM 1660
Taylor, Texas 76574
(w/o enclosures)