



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2008

Ms. Donna L. Clarke
Assistant Criminal District Attorney
County of Lubbock
916 Main Street, Suite 1101
Lubbock, Texas 79401

OR2008-10343

Dear Ms. Clarke:

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# 317392.

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for all call records made from February 1, 2008 through May 8, 2008 pertaining to the requestor's adult daughter and a specified address, specifically including a specified incident report. 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.

Initially, we note that report 07-106-28, which we have marked, is not responsive to the instant request because it was created prior to the specified period of time at issue in the request. The sheriff's office need not release non-responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

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. This section encompasses the doctrine of common-law privacy, which protects information if: (1) it contains highly intimate or embarrassing facts the publication

of which would be highly objectionable to a reasonable person, and (2) it 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 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 part, the present request seeks all records involving the requestor's adult daughter. This portion of the request, which requires the sheriff's office to compile unspecified criminal history implicates the daughter's right to privacy. We note, however, that the requestor in this instance is the mother of the individual with the privacy interest. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect her daughter's common-law privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the legal guardian of her daughter or is acting as her authorized representative, the sheriff's office may not withhold any of the requested information from her under section 552.101 of the Government Code in conjunction with common-law privacy.¹ If the requestor is not the legal guardian of her daughter or is not her authorized representative, to the extent the sheriff's office maintains law enforcement records depicting the daughter as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

You have submitted a report in which the daughter is not listed as a suspect, arrestee, or criminal defendant. Accordingly, we will address your argument against disclosure for this report. Section 552.101 of the Government Code also encompasses information made confidential by other statutes such as section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

¹To the extent this information is not subject to common-law privacy, we note that it contains social security numbers. 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. In this instance, however, the requestor is the mother of one of the individuals whose social security number is at issue. We note that if the requestor is the authorized representative of the individual whose social security number may be at issue, then the requestor has a right to that information. *See* generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

(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.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Report 08-100-195 involves juvenile delinquent conduct occurring after September 1, 1997. None of the exceptions in section 58.007 apply. Therefore, report 08-100-195 is confidential pursuant to section 58.007(c) of the Family Code and the sheriff's office must withhold it under section 552.101 of the Government Code.²

In summary, if the requestor is not the legal guardian or authorized representative of her daughter, to the extent the sheriff's office maintains law enforcement records depicting the daughter as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As you make no further arguments against disclosure, to the extent any remaining information exists, it 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 file suit in

²As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 317392

Enc. Submitted documents

c: Ms. Kathy Hubbard
1408- 10th
Shallowater, Texas 79363
(w/o enclosures)