



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 2, 2009

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

OR2009-01310

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# 333935.

The Williamson County Sheriff's Office (the "sheriff") received a request for all information pertaining to two named individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.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. This exception encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. U.S. 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. However,

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.

information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Additionally, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. In this instance, the request is for any and all records pertaining to two named individuals. This request requires the sheriff to compile the named individuals' criminal histories. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information related to routine traffic violations. The sheriff may not withhold this information, which we have marked, on this basis.

We also note that you have submitted reports that do not list the named individuals as suspects, arrestees, or criminal defendants. These reports do not implicate the privacy interests of the named individuals. Thus, we will address your remaining arguments against the disclosure of this information

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which 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, 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). You claim that report number 95-12-1418 was used or developed in an investigation of child abuse. *See id.* § 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of this section 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). Based on your representations and our review, we find that the report number 95-12-1418 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, report number 95-12-1418 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

Next, we address your assertion that report number 96-04-2829J is excepted in its entirety under section 552.101 of the Government code in conjunction with section 58.007 of the Family Code. Section 552.101 also section 58.007 of the Family Code. Juvenile law enforcement records relating to relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 58.007(c). Juvenile law enforcement records pertaining to conduct occurring before January 1, 1996 are generally confidential under former section 51.14(d) of the Family Code. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). However, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996, and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. In this instance, report number 96-04-2829J pertains to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, and is therefore not confidential under either the former section 51.14(d) or the current section 58.007 of the Family Code. Thus, the report number 96-04-2829J may not be withheld under section 552.101 on this basis.

However, you also assert that report number 96-04-2829J, as well as, report numbers 97-06-01667, C00-04-5203, 96-09-2263, and C00-05-1948 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report numbers 96-04-2829J, 97-06-01667, C00-04-5203, 96-09-2263, and C00-05-1948 all pertain to criminal investigations by the sheriff that have been concluded and that did not result in conviction or deferred adjudication. Based on your representations, and our review, we find that section 552.108(a)(2) is generally applicable to report numbers 96-04-2829J, 97-06-01667, C00-04-5203, 96-09-2263, and C00-05-1948.

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*. *See Open Records Decision No. 127 (1976)* (summarizing types of information made public by *Houston Chronicle*). Basic information includes, among other things, the names of the investigating officers. *Houston Chronicle*, 531 S.W.2d at 185-87; *see also* ORD 127 at 4. However, you seek to withhold the name of the investigating officer you have marked from the basic information in report number C00-04-5203, as well as the names of the investigating officers in report numbers 95-06-1818 and C02-10-0672 under section 552.101 of the Government Code on the basis of common-law privacy and special circumstances.

In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 in conjunction with common-law privacy on a showing of "special circumstances." This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." ORD 169 at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You state that report numbers C00-04-5203, 95-06-1818, and C02-10-0672 contain the identifying information of undercover narcotics agents and that the release of their identifying information would put the undercover officers' lives at risk. Having considered your arguments and the reports at issue, we find that the sheriff must withhold the identifying information of the undercover narcotics agents you have marked in report numbers C00-04-5203, 95-06-1818, and C02-10-0672 pursuant to section 552.101 on the basis of common-law privacy and special circumstances.

Accordingly, with the exception of the basic information, which must be released, the sheriff may withhold report numbers 96-04-2829J, 97-06-01667, C00-04-5203, 96-09-2263, and C00-05-1948 under section 552.108(a)(2) of the Government Code.² However, in releasing the basic information in report number C00-04-5203, the sheriff must withhold the identifying information of the undercover narcotics agent you have marked under section 552.101 on the basis of common-law privacy and special circumstances. As our ruling with regard to report numbers 96-04-2829J, 97-06-01667, C00-04-5203, 96-09-2263, and C00-05-1948 is dispositive, we need not address your remaining arguments against the disclosure of portions of these reports.³

Next, you contend that the information you have marked in report number C02-10-0672 is confidential pursuant to the doctrine of common-law privacy. As discussed above, common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree that the information you have marked in report number C02-10-0672 is intimate and embarrassing and of no legitimate public interest. Accordingly, the marked information in report number

²We note basic information includes an arrestee's social security number. 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.

³We note that you have the discretion to release all or part of the remaining information in report numbers 96-04-2829J, 97-06-01667, C00-04-5203, 96-09-2263, and C00-05-1948 that is not otherwise confidential by law. Gov't Code § 552.007.

C02-10-0672 must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you have marked information in incident ID numbers 356695 and 12770 and report numbers 88-12-163, 96-05-1648, C02-10-0672, 08-05-6969, 89-17058J3, and 2003-23395 that you claim is excepted under section 552.130 of the Government Code. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). Accordingly, the sheriff must withhold the Texas driver's license and license plate information you have marked in incident ID numbers 356695 and 12770 and report numbers 88-12-163, 96-05-1648, C02-10-0672, 08-05-6969, 89-17058J3, and 2003-23395 under section 552.130 of the Government Code.

Finally, you assert that the social security number you have marked in incident ID number 356695 is excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. The sheriff may withhold the social security number you have marked in incident ID number 356695 pursuant to section 552.147.

In summary, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. The sheriff must withhold report number 95-12-1418 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, which must be released, the sheriff may withhold report numbers 96-04-2829J, 97-06-01667, C00-04-5203, 96-09-2263, and C00-05-1948 under section 552.108(a)(2) of the Government Code. However, in releasing the basic information in report number C00-04-5203, the sheriff must withhold the identifying information of the undercover narcotics agent you have marked under section 552.101 of the Government Code on the basis of common-law privacy and special circumstances. The sheriff must also withhold the identifying information of narcotics agents you have marked in report numbers 95-06-1818 and C02-10-0672 pursuant to section 552.101 of the Government Code on the basis of common-law privacy and special circumstances. The sheriff must also withhold the medical information you have marked in report number C02-10-0672 under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information you have marked in incident ID numbers 356695 and 12770 and report

numbers 88-12-163, 96-05-1648, C02-10-0672, 08-05-6969, 89-17058J3, and 2003-23395 under section 552.130 of the Government Code. The sheriff may withhold the information you have marked in incident ID number 356695 under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 333935

Enc. Submitted documents

cc: Requestor
(w/o enclosures)