



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2009

Mr. Roy L. Cordes, Jr.
County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-03858

Dear Mr. Cordes:

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# 338386.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified address and person during a specified time period. You state that front page offense information for offense report number 08-29261 will be released to the requestor.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹We assume that the "front page" information you intend to release is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

²We 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.

Initially, we note that the requestor has authorized the exclusion of social security, drivers license, and state identification numbers from the requested information; therefore this information is not responsive to the request. The sheriff need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy, which 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. 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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history record information 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. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy.

Next, we note that you have submitted information which does not identify the named individual as a suspect, arrestee, or criminal defendant. Section 552.101 also excepts from disclosure information protected by other statutes. Section 552.101 encompasses 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, 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). We note that report numbers 04-6466 and 08-31761 concern investigations of conduct within the scope of section 261.201. *See id.* § 261.001(4)(a)

(definition of "neglect" includes "leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm"); *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). You do not indicate that the sheriff has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on that assumption, report numbers 04-6466 and 08-31761 are confidential pursuant to section 261.201 of the Family Code, and the sheriff must withhold these documents in their entirety under section 552.101 of the Government Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are generally 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.

Report number 08-8278 involves juvenile delinquent conduct that occurred after September 1, 1997. Thus, this information is subject to section 58.007. We note, however, that the requestor is the mother of the juvenile suspect listed in the submitted information. Under section 58.007(e), the requestor may inspect law enforcement records concerning her own child. Fam. Code § 58.007(e). However, any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See*

³We 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.").

id. § 58.007(j)(1). Therefore, the sheriff must withhold the identifying information of the juvenile witness under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code. The remaining information in report number 08-8278 must be released to the requestor.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 08-29261 relates to a pending criminal investigation. Based upon this representation, we conclude that the release of this report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 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) (court delineates law enforcement interests that are present in active cases). Thus, with the exception of basic information, which you state will be released, you may withhold report number 08-29261 from disclosure based on section 552.108(a)(1).⁴

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 any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Report numbers 04-6466 and 08-31761 must be withheld in their entirety pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of the information identifying a juvenile witness that must be withheld under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code, report number 08-8278 must be released to the requestor pursuant to section 58.007(e) of the Family Code. Finally, with the exception of basic information, which you say you will release, the sheriff may withhold report number 08-29261 under section 552.108 of the Government Code.

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,

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of the requested information.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eb

Ref: ID# 338386

Enc. Submitted documents

cc: Requestor
(w/o enclosures)