



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2009

Ms. M. Ann Montgomery
Assistant Ellis County and District Attorney
Temporary Administration Building
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2009-05419

Dear Ms. Montgomery:

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# 340674.

The Ellis County Sheriff's Department (the "sheriff") received a request for information regarding a named individual and a specified address. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first address your claim under common-law privacy, as this is potentially the most encompassing exception you claim. 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 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

¹Although you raise section 552.135 in your brief, you have marked portions of the submitted information under section 552.130. As section 552.130 is the appropriate exception in this case, we will address it.

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.

The requestor seeks, among other things, all information involving a named individual. We find that this part of the request requires the sheriff to compile unspecified law enforcement records concerning the named individual. Such a request implicates the named individual's privacy rights. Thus, to the extent the sheriff maintains law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, you have submitted information that does not relate to the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of an individual's criminal history, the sheriff may not withhold it in its entirety under section 552.101 on that basis. Accordingly, we will address your remaining arguments against the disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. You claim that a portion of the information in Exhibit B is excepted from disclosure pursuant to section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are 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.

Fam. Code § 58.007. Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Upon review, we agree that a portion of the information involves juvenile delinquent conduct occurring after September 1, 1997. *See id.* §§ 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). It does not appear that any of the exceptions in section 58.007

apply. Accordingly, we conclude the information we have marked is confidential pursuant to section 58.007 of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Upon review, we find a portion of the submitted information is a report used or developed in an investigation under chapter 261. *See id.* § 261.001 (defining “abuse” and “neglect” 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). Thus, we find the information we have marked is within the scope of section 261.201 of the Family Code. You have not indicated 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, the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

The remaining information contains additional information protected by common-law privacy. The doctrine of common-law privacy is subject to the two pronged test discussed above. Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find that some of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, we have marked portions of the remaining information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information constitutes information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld on the basis of common-law privacy.

Next, you raise section 552.108 of the Government Code for portions of the remaining information. Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You indicate that the information you have marked in case numbers 05-10573, 05-10576, 05-14672, 06-12082, 08-10282, and 09-01189 relates to concluded cases that did not result in convictions or deferred adjudications. Based on your representation, we conclude that the sheriff may withhold the information you have marked under section 552.108(a)(2) in case numbers 05-10573, 05-10576, 05-14672, 06-12082, 08-10282, and 09-01189.

You also claim that section 552.130 of the Government Code is applicable to some of the remaining information. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. *See id.* § 552.130(a)(1). We note that section 552.130 protects personal privacy. In this instance, we note that the requestor is an attorney representing one of the individual’s whose information is at issue. Under section 552.023 of the Government Code, a person has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests. *See id.* § 552.023. Thus, the requestor has a right of access to his client’s Texas driver’s license information and the sheriff may not withhold this information in this instance. However, we agree that the sheriff must withhold the information you have marked pertaining to other individuals, as well as the information we have marked, under section 552.130.

Finally, you raise 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. Because this exception also protects personal privacy, the requestor has a right of access to his client’s social security number under section 552.023, and you may not withhold that information under section 552.147.

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and sections 58.007 and 261.201 of the Family Code. The sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code in case numbers 05-10573, 05-10576, 05-14672, 06-12082, 08-10282, and 09-01189. With the exception of the requestor’s client’s Texas driver’s license information, the sheriff must withhold the information you have marked, as well as the information we have marked,

under section 552.130 of the Government Code. The remaining information must be released.²

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/jb

Ref: ID#340674

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because some of the information being released may be confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.