



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2010

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, 1<sup>st</sup> Floor  
Conroe, TX 77301

OR2010-00757

Dear Mr. Walker:

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# 367220 (Montgomery County Open Records # 2009-4000).

The Montgomery County Sheriff's Department (the "sheriff") received a request for all reports and call screens for service related to the requestor and two other named individuals and two specified addresses. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You note that some of the requested information was the subject of a previous request from this requestor as a result of which this office issued Open Records Letter No. 2009-12181 (2009). We have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based. We therefore conclude that the sheriff must continue to rely on Open Records Letter No. 2009-12181 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the present request seeks

additional information that was not addressed in Open Records Letter No. 2009-12181; therefore, we will consider your arguments against disclosure of this information.

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 it (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 established. *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. 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 courthouses 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We find the present request requires the sheriff to compile unspecified criminal history records concerning the two individuals other than the requestor named in the request, and thus, implicates these individuals' right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the two named individuals other than the requestor as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy.

You have submitted records that do not list the two named individuals other than the requestor as suspects, arrestees, or criminal defendants. These records are not part of a compilation of criminal history for these two individuals and therefore do not implicate the individuals' right to privacy. Section 552.101 also encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] 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 assert that the submitted information is subject to section 261.201. Based on your representations and our review, we find that Exhibit B-1 was used or developed in an investigation of suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for the 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). As you do not indicate that the sheriff has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Therefore, the sheriff must withhold Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, to the extent the sheriff maintains law enforcement records depicting the two named individuals other than the requestor as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy. The sheriff must withhold Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 261.201 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](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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/rl

Ref: ID# 367220

Enc. Submitted documents

c: Requestor  
(w/o enclosures)