



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2010

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

OR2010-06371

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# 378342.

The Williamson County Sheriff's Office (the "sheriff") received a request for information involving three named individuals, a specified address, and a specific time interval. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.136, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.<sup>1</sup>

We initially note that the requestor does not seek access to any social security, Texas driver's license, Texas license plate or vehicle identification numbers contained in the submitted records. Thus, to the extent that the submitted records contain those types of information, they are not responsive to this request. We also note that one of the submitted incident reports does not fall within the time interval specified by the requestor. Thus, that report, which we have marked, also is not responsive to this request. This decision does not address

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

the public availability of the submitted information that is not responsive to this request, and the sheriff need not release such information in response to the request.

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 information that other statutes make confidential. Section 58.007 of the Family Code provides in part:

(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 Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of Fam. Code tit. 3). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender.

Some of the submitted information involves a juvenile offender, so as to fall within the scope of section 58.007(c). *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code tit. 3). In this instance, however, the requestor is a parent of the juvenile involved. The requestor has a right to inspect juvenile law enforcement records concerning his child pursuant to section 58.007(e). *See id.* § 58.007(e). You claim, however, that some of the information that is subject to section 58.007(e) is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Section 58.007(j) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Therefore, we will determine whether the sheriff may withhold any of the information that is subject to section 58.007(e) under section 552.101 or section 552.108.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in part:

(a) [T]he 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse

or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(1) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

*Id.* § 261.201(a), (k)-(l). Some of the remaining information at issue was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code or in providing services as a result of an investigation under chapter 261. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). Thus, that information is generally confidential under section 261.201(a). *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

We note that some of the information that is confidential under section 261.201(a) lists the requestor’s child as the victim of the alleged child abuse. Moreover, that information does not identify the requestor as the person accused of committing the abuse. Therefore, the sheriff may not withhold that information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l) provides, however, that any information that is excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will consider the sheriff’s other claims for the information that is subject to section 261.201(k).

We find that the remaining information that falls within the scope of section 261.201(a) is not subject to section 261.201(k). As you do not indicate that the sheriff has adopted a rule that governs the release of such information, we assume that no such rule exists. We

therefore conclude that the sheriff must withhold that information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Although you have marked other information that the sheriff seeks to withhold on this basis, we find that the information in question does not consist of a report of alleged or suspected child abuse or neglect or of information used or developed in an investigation of alleged or suspected child abuse or neglect or in providing services as a result of an investigation. *See id.* § 261.201(a)(1)-(2). We therefore conclude that the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also 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) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. 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 this instance, the requestor seeks access to unspecified law enforcement records relating to the three individuals named in his request. Thus, this request requires the sheriff to compile the named individuals' criminal histories and thereby implicates their privacy interests. We note that the requestor has a special right of access under section 552.023 of the Government Code to any information that would be excepted from public disclosure to protect his child's privacy. *See Gov't Code* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).<sup>2</sup> To the extent, however, that any of the submitted information depicts either of the other two named individuals as a suspect, arrested person, or criminal defendant, the sheriff must withhold any such information under section 552.101 in conjunction with common-law privacy.

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<sup>2</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *Gov't Code* § 552.023(a).

Next, we address the sheriff's claims under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that some of the remaining information is related to pending criminal investigations. Based on your representations, we conclude that the information we have marked may generally be withheld under section 552.108(a)(1). *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).

Section 552.108(a)(2) 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 state that some of the remaining information is related to criminal investigations that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude that the information we have marked may generally be withheld under section 552.108(a)(2).

We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff must release basic offense and arrest information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The sheriff may withhold the rest of the information we have marked under section 552.108.

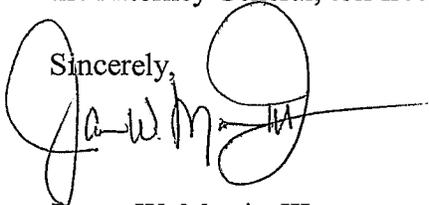
In summary: (1) the information we have marked under section 261.201 of the Family Code must be withheld under section 552.101 of the Government Code; (2) any remaining information that depicts any of the named individuals other than the requestor's child as a suspect, arrested person, or criminal defendant must be withheld under section 552.101 in conjunction with common-law privacy; and (3) the information we have marked under section 552.108 of the Government Code may be withheld, except for the basic information that must be released under section 552.108(c). The rest of the submitted information must

be released.<sup>3</sup> As we are able to make these determinations, we do not address your other arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/rl

Ref: ID# 378342

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Although this requestor has a right of access under section 58.007(e) of the Family Code to information relating to his child, the sheriff would ordinarily be required to withhold that information under sections 58.007(c). This requestor also has a special right of access under section 552.023 to information relating to his child that the sheriff would ordinarily be required to withhold under section 552.101 in conjunction with common-law privacy. Therefore, if the sheriff receives another request for this same information from a different requestor, the sheriff should resubmit this information and request another decision. See Gov't Code §§ 552.301(a), .302.