



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2010

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

OR2010-06673

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# 378726.

The Williamson County Sheriff's Office (the "sheriff") received a request for all information in the requestor's application folder, except the long form and the application itself. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has agreed to the redaction of social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers. Accordingly, any of this information within the submitted documents is not responsive to the present request. The sheriff need not release nonresponsive information, and we do not address such information in this ruling.

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 information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant 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.

Fam. Code § 261.201(a). You state that a portion of the submitted information relates to a child abuse investigation conducted by the sheriff. *See id.* § 261.001(1) (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). Upon review, we agree that the information we have marked was used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). You do not indicate the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given this assumption, we find the information we have marked is confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code.¹ *See Open Records Decision No. 440 at 2 (1986)* (construing statutory predecessor to section 261.201). We note the remaining information you seek to withhold on the basis of section 261.201 was created as part of an employment application background check. That information was not used or developed by the sheriff during the actual child abuse investigation at issue. *See id.* § 261.201(a)(2). The sheriff has, therefore, failed to demonstrate the applicability of 261.201 to the remaining information. Consequently, the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or

¹As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note that the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes CHRI that must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, the remaining information you have marked under chapter 411 of the Government Code consists of driving record information that may not be withheld on the basis of section 411.083.

Section 552.101 also encompasses the common-law right of privacy. 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found the identities of juvenile victims of abuse or neglect are excepted from public disclosure under common-law privacy. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we determine that the identifying information of the victim of child abuse, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You claim some of the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(2) 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;

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming subsection 552.108(a)(2) or subsection 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the information you have marked under section 552.108 relates to a concluded criminal investigation that did not result in a conviction or deferred adjudication. We note, however, that section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). In *Fort Worth v. Cornyn*, the Third Court of Appeals agreed with this office's long time interpretation of section 552.108(b) stating that "the type of internal records that could interfere with law enforcement are those that would divulge a police department's methods, techniques, and strategies." See *City of Fort Worth v. Cornyn*, 86 S.W.3d at 326. Further, the Court stated, "when a police department acts as an employer, its concerns are similar to those of other governmental agencies - to hire the most qualified applicants - and, when acting in such a capacity, its activities do not 'relate to law enforcement.'" *Id.* As a general rule, section 552.108 is not applicable to a law enforcement agency's personnel records. See *id.* at 329 (section 552.108(b) not applicable to documents obtained by police department for purpose of evaluating applicant's fitness for employment); see also Open Records Decision Nos. 562 at 10 (1990) (predecessor to section 552.108(b) not applicable to employment information in police officer's file), 361 at 2-3 (1983) (statutory predecessor to section 552.108(b) not applicable to background information collected on unsuccessful applicant for employment with sheriff's department). We note the remaining information you seek to withhold under section 552.108 was created as part of an employment application background check. Upon review, we find you have not demonstrated the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the remaining information.

Consequently, the remaining information may not be withheld under section 552.108 of the Government Code.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* at 6. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You state that the information you have marked consists of confidential test items. Upon review of the information at issue, we find the information we have marked constitutes test items that may be withheld under section 552.122 of the Government Code. We note that the remaining information you seek to withhold under section 552.122 consists of multiple choice answer sheets that do not reveal any test questions. Therefore, the remaining information you have marked may not be withheld under section 552.122.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 261.201(a) of the Family Code, (2) section 411.083 of the Government Code, and (3) common-law privacy. The sheriff may withhold the information we have marked under section 552.122 of the Government Code. The remaining information must be released to the requestor.²

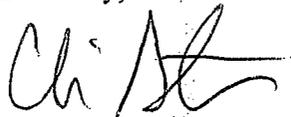
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²We note that the remaining information contains information that is confidential with regard to the general public, but to which the requestor has a right of access under section 552.023 of the Government Code. Section 552.023(a) provides 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). Should the sheriff receive another request for this information from someone other than the requestor, the sheriff should again seek a decision from this office.

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 "Chris Sterner", with a stylized flourish at the end.

Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 378726

Enc. Submitted documents

c: Requestor
(w/o enclosures)