



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 6, 2010

Mr. Robert E. Etlinger  
Assistant County Attorney  
Guadalupe County  
101 East Court Street, Suite 104  
Seguin, Texas 78155-5779

OR2010-09910

Dear Mr. Etlinger:

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# 385295.

The Guadalupe County Sheriff's Office (the "sheriff") received three requests from the same requestor for a specified incident report, all incidents during a specified time period involving the requestor, and all incidents during a specified time period involving a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted 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 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.<sup>1</sup> *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. *See 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. One of the present requests requires the sheriff to compile unspecified police records concerning a named individual who is not the requestor. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual as suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted incident reports that do not involve the named individual as a suspect, defendant, or arrestee. These reports do not constitute a criminal history compilation and may not be withheld under section 552.101 and common-law privacy on that basis. Thus, we will address your argument against disclosure for these incident reports as well as for the remaining requests.

Section 552.101 of the Government Code 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 confidential under section 58.007, which provides in pertinent part 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 Subchapters B, D, and E.

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<sup>1</sup>Unlike other exceptions under the Act, this office will raise mandatory exceptions to disclosure on behalf of a governmental body, as these are exceptions that may not be waived. *See Gov't Code* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Fam. Code § 58.007(c). Upon review, we note some of the submitted information involves juvenile delinquent conduct, so as to fall within the scope of section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of the Family Code); *see also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Therefore, we find that incident reports we have marked are confidential and must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note that basic information is not released when information is being withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(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 the remaining information consists of closed criminal investigations that did not result in a conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *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); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(2) of the Government Code.

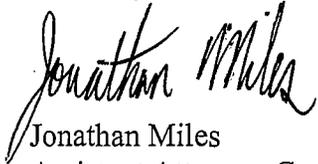
In summary, (1) to the extent the sheriff maintains law enforcement records depicting the named individual as suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the sheriff must withhold the incident reports we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; and (3) with the exception of basic information, the remaining information may be withheld under section 552.108(a)(2) 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,

A handwritten signature in cursive script that reads "Jonathan Miles".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/eb

Ref: ID# 385295

Enc. Submitted documents

c: Requestor  
(w/o enclosures)