



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2010

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips, Suite 100
Conroe, Texas 77301

ATTORNEY GENERAL OF TEXAS

OR2010-11875

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# 389420.

The Montgomery County Sheriff's Department (the "sheriff") received a request for all information related to a named individual, including four specified addresses, during a specified time period. You claim that the requested 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.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) 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 prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. A compilation of an individual's criminal history is also 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 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.

The present request seeks "[a]ny and all reports, offenses, or citations" pertaining to a specific individual. We find this request for unspecified law enforcement records implicates this individual's right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it must withhold such information under section 552.101 in conjunction with common-law privacy.

We note, however, that you have submitted information, labeled as Exhibits B-2 and B-3, which lists the specified individual as a witness or complainant and not a suspect, arrestee, or criminal defendant. Thus, this information does not constitute a compilation of the individual's criminal history and may not be withheld under section 552.101 on this basis. However, we will address your remaining arguments against disclosure of this information.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides as follows:

(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 assert, and we agree, the information in Exhibit B-2 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261); *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. We therefore conclude that the information in Exhibit B-2 is confidential under section 261.201(a). Accordingly, this information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note section 552.1175 of the Government Code may apply to portions of the remaining information in Exhibit B-3.¹ Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). If the individual whose personal information is at issue is currently a licensed peace officer under article 2.12 of the Code of Criminal Procedure who elects to restrict access to his information in accordance with section 552.1175(b), the sheriff must withhold the information we have marked under section 552.1175 of the Government Code. If the individual at issue is not currently a licensed peace officer or does not elect to restrict public access to the information in accordance with section 552.1175(b), the sheriff may not withhold this information under section 552.1175.

To the extent the information we have marked is not subject to section 552.1175 of the Government Code, we note that some of the remaining information in Exhibit B-3 is subject to section 552.101 in conjunction with common-law privacy. As noted above, the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.*, 540 S.W.2d at 683. To the extent the information we have marked is not subject to section 552.1175, the sheriff must

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the information we have marked in Exhibit B-3 under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note that portions of Exhibit B-3 include information subject to section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). The sheriff must withhold this information, which we have marked, under section 552.130.²

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it must withhold such information under section 552.101 in conjunction with common-law privacy. The sheriff must withhold Exhibit B-2 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the individual whose personal information is at issue is currently a licensed peace officer under article 2.12 of the Code of Criminal Procedure who elects to restrict access to his information in accordance with section 552.1175(b), the sheriff must withhold the information we have marked under section 552.1175 of the Government Code. To the extent the information we have marked is not subject to section 552.1175 of the Government Code, the sheriff must withhold the information we have marked in Exhibit B-3 under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked in Exhibit B-3 under section 552.130 of the Government Code. The remaining information in Exhibit B-3 must be released.³

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

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released may contain social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

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 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 389420

Enc. Submitted documents

c: Requestor
(w/o enclosures)