



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2010

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

OR2010-14820

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# 395152.

The Williamson County Sheriff's Office (the "sheriff") received a request for all records pertaining to a named individual. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excludes social security numbers and Texas driver's license, license plate, and vehicle identification numbers from the scope of the request. Accordingly, these types of information are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff is not required to release that information in response to the request.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of this test must be

satisfied. *Id.* at 681-82. This office has found 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to a named individual. This request requires the sheriff to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the sheriff maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy.¹

We note you have submitted reports that do not list the named individual as a suspect, arrestee, or criminal defendant. These reports do not consist of a compilation of the named individual's criminal history and may not be withheld under section 552.101 of the Government Code on that basis. We note portions of this information are excepted from disclosure under common-law privacy. Common-law privacy also encompasses the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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. 540 S.W.2d at 683. Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find portions of this information, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff must withhold the marked information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated how the remaining information you have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, no portion of the remaining information is confidential under common-law privacy, and it may not be withheld on that basis.

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. The relevant language of section 58.007(c) reads 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.

Fam. Code § 58.007(c). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You argue incident report numbers C06-06-4615J and C03-04-5957J are subject to section 58.007(c). Upon review, we find incident report number C06-06-4615J does not contain the identity of a juvenile suspect, offender, or defendant. Further, you have failed to demonstrate incident report number C03-04-5957J involves a juvenile suspect or offender who was at least ten years old and less than seventeen years old at the time of the incident at issue. Accordingly, incident report numbers C06-06-4615J and C03-04-5957J may not be withheld under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. The term CHRI does not include driving record information maintained by DPS. *Id.* § 411.082(2)(B). Furthermore, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find you have failed to demonstrate how any portion of the information you have marked consists of CHRI that is confidential under section 411.083. Thus, the sheriff may not withhold any of the information at issue under section 552.101 of the Government Code on that basis.

Next, you claim section 552.108 of the Government Code for portions of the remaining information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state incident report numbers C07-03-0004, C06-12-6793, C06-06-4615J, and C03-04-5957J pertain to closed criminal investigations that did not result in convictions or deferred adjudications. Therefore, we find section 552.108(a)(2) of the Government Code is generally applicable to incident report numbers C07-03-0004, C06-12-6793, C06-06-4615J, and C03-04-5957J.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff may withhold incident report numbers C07-03-0004, C06-12-6793, C06-06-4615J, and C03-04-5957J from disclosure under section 552.108(a)(2).²

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

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(a)(1), (b).³ We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). A portion of the remaining information, which we have marked, relates to a peace officer who is employed by a governmental body other than the department. Thus, to the extent the cellular telephone number we have marked relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b) and a governmental body does not pay for the peace officer's cellular telephone service, it must be withheld from disclosure pursuant to section 552.1175 of the Government Code. Conversely, if the peace officer at issue does not elect to restrict access to the information in accordance with section 552.1175(b) or a governmental body pays for the peace officer's cellular telephone service, the marked information may not be withheld pursuant to section 552.1175.

Portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find portions of the remaining information contain Texas motor vehicle record information. Accordingly, the sheriff must withhold the Texas motor vehicle record information we have marked within the remaining documents under section 552.130.

In summary, the sheriff must withhold (1) law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy, to the extent the sheriff maintains any such information; (2) the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information we have marked under section 552.1175 of the Government Code, to the extent the peace officer elects to restrict access to the information in accordance with section 552.1175(b) and a governmental body does not pay for the peace officer's cellular telephone service; and (4) the Texas motor vehicle record information we have marked under

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 of the Government Code. With the exception of the basic information, the sheriff may withhold incident report numbers C07-03-0004, C06-12-6793, C06-06-4615J, and C03-04-5957J under section 552.108(a)(2) of the Government Code. The remaining information must be released.⁴

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 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 395152

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released in this instance includes information that may be confidential with respect to the general public. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.