



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2010-15602

Dear Ms. Rangel:

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# 396534.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for records pertaining to six named individuals and six specified incidents. You indicate the sheriff does not possess any records pertaining to one of the specified incidents.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, part of which is a representative sample.²

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismiss'd); Open Records Decision Nos.605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. *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 demonstrated. *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 a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

In this instance, the request seeks unspecified law enforcement records pertaining to living individuals. Thus, the request implicates those individuals’ rights to privacy. Therefore, to the extent the sheriff maintains records listing the living named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold this information under section 552.101 in conjunction with common-law privacy.³

We note you have submitted reports that do not list any of the living named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the living named individuals and may not be withheld based on common-law privacy. However, we will address your remaining arguments against the disclosure of this information.

Section 552.101 also encompasses information made confidential by other statutes. Section 58.007 of the Family Code provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007(c) reads as follows:

³As we are able to make this determination, we need not address your arguments against disclosure of these records.

(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.

Id. § 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). Upon review, we find the information we marked constitutes confidential law enforcement records under section 58.007(c). Moreover, it does not appear any of the exceptions in section 58.007 apply to this information. Further, we determine section 58.007 is not solely intended to protect the privacy interests of subject juveniles. Therefore, the fact that one of the subject juveniles in one of the marked records is now deceased does not remove that information from the ambit of section 58.007. Accordingly, the sheriff must withhold the information we marked under section 552.101 in conjunction with section 58.007(c).⁴

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

(a) Except as provided by section 261.203, the 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, and videotapes, and working

⁴As our ruling is dispositive for this information, we do not address your remaining arguments against its release.

papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Upon review, we find the information we marked consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation conducted under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” 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). You do not indicate the sheriff has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the information we marked is confidential pursuant to section 261.201(a) and the sheriff must withhold it in its entirety under section 552.101.⁵ *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

Section 552.108 of the Government Code 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert release of the remaining information would interfere with a pending murder prosecution. You further state the Fort Bend County District Attorney’s Office “has advised [the murder prosecution] is active in the court [and] any of the offense reports submitted . . . may be used at the trial[.]” Based on these representations and our review of the remaining information, we conclude section 552.108(a)(1) is applicable in this instance. *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).

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). 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; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic

⁵As our ruling is dispositive for this information, we do not address your remaining arguments against its release.

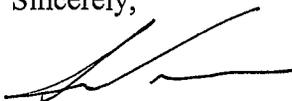
information, the sheriff may withhold the remaining information under section 552.108(a)(1).⁶

In summary, to the extent the sheriff maintains records listing the living named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we marked under section 552.101 of the Government Code in conjunction with (1) section 58.007(c) of the Family Code and (2) section 261.201(a) of the Family Code. Except for basic information, the sheriff may withhold the remaining information under section 552.108(a)(1) 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/tp

Ref: ID# 396534

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶As our ruling is dispositive for this information, we do not address your remaining arguments against its release.