



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

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

OR2010-17544

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# 400584.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information pertaining to (1) a specified address, (2) a named individual for the last three years, (3) another named individual for the last ten years, (4) another specified address for the last five years, and (5) a specified incident related to a specified address and a named individual. You state the sheriff will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

¹We 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.

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.

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

However, we note the requestor also seeks information pertaining to a specified incident and information regarding specified addresses. We find these portions of the request do not require the sheriff to compile unspecified law enforcement records of the named individuals; thus, these portions of the request do not implicate the named individuals' common-law rights to privacy. Further, you have submitted reports that do not list any of the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the 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:

(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 juvenile 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. Accordingly, the sheriff must withhold the information we marked under section 552.101 in conjunction with section 58.007(c).²

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

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative

²As our ruling is dispositive for this information, we do not address your remaining arguments against its release.

of the child requesting the information is alleged to have committed the abuse or neglect.

(1) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Id. § 261.201(a), (k), (1)(2). Upon review, we find report numbers 02-8738, 02-21681, and 04-26273 and related call slips consist of files, reports, records, communications, or working papers used or developed in investigations 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). We note the requestor is the mother of the child victim in report numbers 02-8738, 02-21681, and 04-26273. However, the requestor is accused of committing the alleged abuse in report number 02-21681. Thus, report number 02-21681 and related call slip may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k) (stating child’s parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed the abuse or neglect). Accordingly, the sheriff must withhold report number 02-21681 and related call slip under section 552.101 in conjunction with section 261.201.³ *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

With regard to report number 04-26273 and related call slip, the requestor is not alleged to have committed the suspected abuse. In this instance, report number 04-26273 and related call slip may not be withheld from this requestor pursuant to section 261.201(a). Fam. Code § 261.201(k). We note neither report number 02-8738 or its related call slip identify a suspect. Thus, we are unable to conclusively determine if report number 02-8738 and related call slip may be provided to the requestor pursuant to section 261.201(k). Accordingly, we must rule conditionally with respect to report number 02-8738 and related call slip. If the requestor is alleged to have committed the reported abuse, then the sheriff must withhold report number 02-8738 and related call slip under section 552.101 in conjunction with section 261.201(a). However, if the requestor is not alleged to have committed the reported abuse, the sheriff may not use section 261.201(a) to withhold this information from her. *Id.*

³As our ruling is dispositive for this information, we do not address your remaining arguments against its release.

We note, however, section 261.201(1)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Therefore, we will address your remaining arguments under section 552.108 for report number 04-26273 and related call slip, as well as report number 02-8738 and related call slip, in the event the requestor is not alleged to have committed the reported abuse.

Section 552.108(a)(1) 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 state report number 10-6108 and related call slip relate to a currently pending criminal investigation. Based on your representations and our review of the information at issue, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *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). Thus, section 552.108(a)(1) is applicable to report number 10-6108 and related call slip.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov’t Code §552.108(a)(2). You state report numbers 02-8738, 04-26273, 04-9839, and 10-9973 and related call slips relate to criminal investigations that did not result in convictions or deferred adjudications. Based on your representations and our review of the information at issue, we conclude section 552.108(a)(2) is applicable to report numbers 02-8738, 04-26273, 04-9839, and 10-9973 and related call slips.

As you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The sheriff must release basic information, even if this information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, the sheriff may withhold report number 10-6108 and related call slip under section 552.108(a)(1) and report numbers 04-26273, 04-9839, and 10-9973 and related

call slips, as well as report number 02-8738 and related call slip in the event the requestor is not alleged to have committed the reported abuse, under section 552.108(a)(2).⁴

In summary, to the extent the sheriff maintains law enforcement records listing the 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 section 58.007(c) of the Family Code. The sheriff must withhold report number 02-21681 and related call slip, as well as report number 02-8738 and related call slip if the requestor is alleged to have committed the report abuse, under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Except for basic information, the sheriff may withhold report number 10-6108 and related call slip under section 552.108(a)(1) of the Government Code and report numbers 04-26273, 04-9839, and 10-9973 and related call slips, as well as report number 02-8738 and related call slip in the event the requestor is not alleged to have committed the reported abuse, 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, 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/eeg

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

Ref: ID# 400584

Enc. Submitted documents

c: Requestor
(w/o enclosures)