



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2010

Ms. M. Ann Montgomery  
Assistant County and District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 75165

OR2010-19015

Dear Ms. Montgomery:

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# 403128.

The Ellis County Sheriff's Office (the "sheriff") received a request for all reports regarding the requestor, the requestor's minor child, and two named individuals at given addresses during a specified time period. You claim that 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.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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). This office has found that 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) (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 is for all reports regarding the requestor, the requestor's minor child, and two named individuals at a given address during a specified time period. We find that this request for unspecified law enforcement records implicates privacy interests of the requestor, the requestor's minor child, and the two named individuals. We note that the requestor would have a right of access under section 552.023 of the Government Code to any responsive information that would implicate her privacy interests. *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Further, as the parent of the minor child, the requestor has a special right of access to any responsive information that would ordinarily be withheld to protect the common-law privacy interests of her child. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Consequently, report number 10-13170, which depicts the requestor's minor child as a suspect, may not be withheld from the requestor under section 552.101 in conjunction with common-law privacy. However, to the extent the sheriff maintains law enforcement records depicting the named individuals who are not the requestor or her minor child as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy.

We will address your remaining arguments against disclosure of report number 10-13170. Section 552.101 also encompasses section 58.007 of the Family Code, which reads in relevant 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2).

Report number 10-13170 pertains to juvenile delinquent conduct occurring after September 1, 1997; therefore, this report is subject to section 58.007. However, as previously noted, the requestor is the parent of the juvenile offender. Accordingly, report number 10-13170 may not be withheld from this requestor on the basis of section 58.007(c). *See id.* § 58.007(e). However, because you assert portions of this report are excepted under sections 552.108 and 552.130 of the Government Code, we must address whether the information at issue is excepted under these sections. *See id.* § 58.007(j)(2).

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 that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked in report number 10-13170 relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations, we conclude the sheriff

may withhold the information you have marked under section 552.108(a)(2) of the Government Code.<sup>1</sup>

You assert some of the remaining information in report number 10-13170 is excepted under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1). We agree the sheriff must withhold the Texas driver's license numbers you have marked in report number 10-13170 under section 552.130.<sup>2</sup>

In summary, to the extent the sheriff maintains law enforcement records depicting the named individuals who are not the requestor or her minor child as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff may withhold the marked information in report number 10-13170 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the marked Texas driver's license numbers in report number 10-13170 under section 552.130 of the Government Code. The remaining information in report number 10-13170 must be released to this requestor.<sup>3</sup>

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

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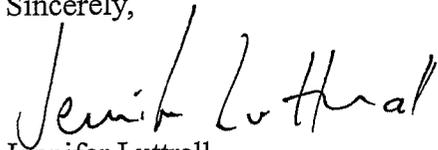
<sup>1</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

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

<sup>3</sup>We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office. We also note the remaining information in this report contains a social security number that does not belong to the requestor or her minor child. 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 under the Act.

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 "Jennifer Luttrall".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 403128

Enc. Submitted documents

c: Requestor  
(w/o enclosures)