



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2011

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

OR2011-01433

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# 407210.

The Ellis County Sheriff's Office (the "sheriff") received a request for any and all records relating to a named individual and any records of calls or complaints made by the requestor. You state that some of the information has been or will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 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 if it (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 established. *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. 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the present request requires the sheriff to compile

unspecified criminal history records concerning the individual named in the request and implicates that 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, the sheriff must withhold any such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

You have submitted information that does not involve the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual. Thus, we will address your arguments against disclosure of this information.

Section 552.101 also encompasses section 261.201 of the Family Code, which states:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, 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 of the child requesting the information is alleged to have committed the abuse or neglect.

(l) 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)–(l). Upon review, we find report 09-18624 consists of a report developed in the investigation of alleged or suspected neglect made under chapter 261. *See id.* § 261.001(4) (defining “neglect” for purposes of chapter 261.) Thus, the information is within the scope of section 261.201 of the Family Code. We note, however, that the requestor is the mother of the children who are the subject of the report. Also, the requestor is not alleged to have committed the neglect. Therefore, the sheriff must provide the requestor with information concerning this report under section 261.201(k). However, before the requestor is permitted to inspect or receive a copy of this report, the sheriff must redact the name of the person making the report. *See id.* § 261.201(l)(3). In addition, the sheriff must redact any information that is excepted from required disclosure under the Act. *See id.* § 261.201(l)(3). As you raise section 552.108 for a portion of the report, we will consider its applicability to this information.

Section 552.108(a)(2) 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)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the information you have marked relates to closed investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree the sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code.¹

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code

¹As our ruling is dispositive, we do not address your remaining argument against disclosure under section 552.108(b)(2) of the Government Code.

§ 552.130. The sheriff must withhold the driver's license numbers you have marked under section 552.130 of the Government Code.²

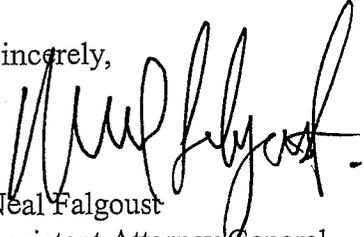
We note you raise section 552.147 of the Government Code, which excepts from required disclosure the social security numbers of living persons. Gov't Code § 552.147. However, upon review, we find the submitted information does not contain any social security numbers subject to section 552.147. Accordingly, none of the submitted information may be withheld on that basis.

In summary, to the extent the sheriff maintains records that depict the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold those records under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the identity of the person who made the report in report 09-18624 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The sheriff must withhold the driver's license numbers you have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

²We note this office has issued Open Records Decision No. 684 (2009), which serves as 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 opinion.

Ref: ID# 407210

Enc. Submitted documents

c: Requestor
(w/o enclosures)