



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 28, 2011

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

OR2011-01488

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# 407465.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information related to a named individual. You state some responsive information will be released to the requestor. You claim that the submitted 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 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 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

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.

(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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the sheriff to compile unspecified law enforcement records concerning the individual at issue. We find that this request requires the sheriff to compile the named individual's criminal history and thereby implicates the named individual's right to privacy. We note, however, that the requestor is the authorized representative of the named individual and, thus, has a right of access to unspecified law enforcement records concerning the named individual. *See Gov't Code* § 552.023(b) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, the requestor, as the authorized representative of the named individual, has a right of access to a compilation of the individual's criminal history, to the extent it exists, pursuant to section 552.023(b), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. Accordingly, we will address the sheriff's remaining arguments against the disclosure of the submitted 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 that occurred on or after September 1, 1997. *See Fam. Code* § 51.03 (defining "delinquent conduct"). 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.

...

(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.

Id. § 58.007(c), (e), (j). 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 agree that report numbers 04-16775 and 04-18741 involve juveniles engaged in delinquent conduct occurring after September 1, 1997; therefore, report numbers 04-16775 and 04-18741 are subject to section 58.007.

It does not appear any of the exceptions in section 58.007 apply to report number 04-18741. Accordingly, the sheriff must withhold report number 04-18741 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

However, the requestor is the authorized representative of the named individual, who is one of the juvenile offenders listed in report number 04-16775. Under section 58.007(e), the requestor has a right to inspect or copy law enforcement records pertaining to his client. *See id.* § 58.007(e). Section 58.007(j) provides, however, that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). In addition, section 58.007(j)(2) states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.*

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

§ 58.007(j)(2). Accordingly, we will address your arguments under sections 552.108(a)(2) and 552.130 of the Government Code for report number 04-16775 along with your arguments for the remaining submitted information.

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 state report number 09-11649 relates to a pending criminal case. Based on your representation and our review of the information at issue, we find 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report number 09-11649.

Section 552.108(a)(2) 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 . . . 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 04-16775 and 05-9915 relate to closed criminal cases that did not result in a conviction or deferred adjudication. Based on your representations and our review of the information at issue, we conclude section 552.108(a)(2) is applicable to report numbers 04-16775 and 05-9915.

We note, however, 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 09-11649 under section 552.108(a)(1) and report numbers 04-16775 and 05-9915 under section 552.108(a)(2).³

In summary, the sheriff must withhold report number 04-18741 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the

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

exception of basic information that must be released, the sheriff may withhold report number 09-11649 under section 552.108(a)(1) of the Government Code and report numbers 04-16775 and 05-9915 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 407465

Enc. Submitted documents

c: Requestor
(w/o enclosures)