



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2011

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

OR2011-04602

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# 413394.

The Ellis County Sheriff's Office (the "sheriff") received a request for any and all reports relating to three named individuals. 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 individuals named in the request and implicates those individuals' rights to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, 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 individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals. Thus, we will address your arguments against disclosure of this information.

Section 552.101 also encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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.

Fam. Code § 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 at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find report number 10-17308 pertains to juvenile delinquent conduct. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for the purposes of section 58.007). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find report

number 10-17308 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup>

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 convictions 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.<sup>2</sup>

You also assert some of the remaining information is protected by common-law privacy. The doctrine of common-law privacy is subject to the two pronged test discussed above. Common-law privacy also encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*, which included information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See* 540 S.W.2d at 683. However, none of the remaining information constitutes information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld on the basis of common-law privacy.

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 § 552.130(a)(1), (2). Thus, the sheriff must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.<sup>3</sup>

In summary, to the extent the sheriff maintains records that depict any of the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold those records under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold report number 10-17308 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The sheriff may

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

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

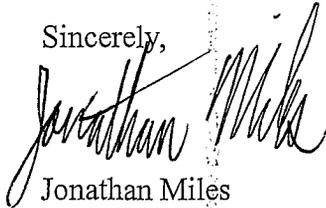
<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), which serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

withhold the information you have marked under section 552.108(a)(2) of the Government Code. The sheriff must withhold the motor vehicle information 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 413394

Enc. Submitted documents

c: Requestor  
(w/o enclosures)