



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2011

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

OR2011-07238

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# 418309.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all information related to the requestor, four other named individuals, and two specified addresses. You state the sheriff will release some of the requested information to the requestor. You claim 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 considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. 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). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks access to law enforcement records involving himself and four other named individuals. Pursuant to section 552.023 of the Government Code, the requestor has a right of access to the his own private criminal history compilation. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).¹ Further, we note two of the named individuals are the requestor's children. The requestor also has a right of access under section 552.023 to any information the sheriff would otherwise be required to withhold from the public to protect the privacy of his minor children. *See* Gov't Code § 552.023; ORD 481. Additionally, we find the requestor is seeking access to specific reports involving himself and his former spouse. Thus, this portion of the request does not require the sheriff to compile unspecified law enforcement records. Therefore, the sheriff may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy as a criminal history compilation.

Section 552.101 also encompasses information made confidential by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. 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* Fam. Code § 51.02(2). Section 58.007 provides in pertinent 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.

¹Section 552.023 provides in part that "[a] 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." Gov't Code § 552.023(a).

(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). Upon review, we find report numbers 10-27974 and 10-30852 involve juveniles engaged in delinquent conduct occurring after September 1, 1997; therefore, these reports are subject to section 58.007. However, the submitted information reveals the requestor is the parent of one of the juvenile offenders in report numbers 10-27974 and 10-30852. Under section 58.007(e), the requestor has a right to inspect or copy law enforcement records pertaining to his daughter. *See id.* § 58.007(e). Section 58.007(j)(1) 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.* § 58.007(j)(2). Accordingly, we will address your arguments against disclosure of these reports.

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 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:

...

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

Id. § 261.201(a), (k), (l)(2). You state some of the submitted reports are subject to section 261.201 of the Family Code. Based on your representation and our review, we find report numbers 09-1768, 09-519, 08-29762, 08-26190, 08-8297, 08-20643, and 10-4221 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 by the sheriff and Child Protective Services (“CPS”). *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 father of the child victims at issue in the listed reports. However, the requestor is accused of committing the alleged abuse at issue in report number 08-20643. Thus, this report and its 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). Further, we note that CPS is the investigating agency for the remaining reports. Accordingly, the sheriff must withhold report numbers 09-1768, 09-519, 08-29762, 08-26190, 08-8297, 08-20643, and 10-4221 and related call slips under section 552.101 in conjunction with section 261.201.² *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

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

Further, we find portions of report number 10-27974 and its call slip consist of a report of child abuse that is subject to section 261.201(a)(1). With regard to this information, which we have marked, the requestor is not alleged to have committed the suspected abuse. In this instance, no portion report number 10-27974 and its related call slip may be withheld from this requestor pursuant to section 261.201(a). Fam. Code § 261.201(k). However, section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your argument against disclosure under section 552.108 of the Government Code for this report.

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 numbers 10-25681, 10-27974, and 10-30852 and related call slips relate to currently pending criminal investigations. 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 numbers 10-25681, 10-27974, and 10-30852 and their related call slips.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff may withhold report numbers 10-25681, 10-27974, and 10-30852 and their related call slips under section 552.108(a)(1).³ However, the sheriff must withhold from the basic information the personally identifiable information we have marked concerning the other juvenile arrestees in report number 10-30852 under section 552.101 in conjunction with section 58.007(j)(1). *See* Fam. Code § 58.007(j)(1).

In summary, the sheriff must withhold report numbers 09-1768, 09-519, 08-29762, 08-26190, 08-8297, 08-20643, and 10-4221 and related call slips under section 552.101 in conjunction with section 261.201. With the exception of basic information, the sheriff may withhold report numbers 10-25681, 10-27974, and 10-30852 and their related call slips under

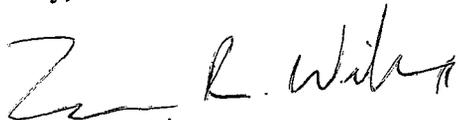
³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 552.108(a)(1).⁴ However, in releasing basic information, the sheriff must withhold the personally identifiable information we have marked concerning the other juvenile arrestees in report number 10-30852 under section 552.101 in conjunction with section 58.007(j)(1) of the Family 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 418309

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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.