



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2011-10929

Dear Mr. Walker:

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# 425316 (Montgomery ORR# 2011-2241).

The Montgomery County Sheriff's Department (the "sheriff") received a request for all reports relating to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the request. The requestor seeks records related to a named individual. You have submitted records that do not relate to the named individual, and are therefore not responsive to the request. This ruling does not address the public availability of the non-responsive information, which we have marked, and the sheriff need not release information that is not responsive to the request.

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 courthouses 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. We agree the present request requires the sheriff to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named 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 under section 552.101 in conjunction with common-law privacy.

We note you have submitted records responsive to the request that do not list the named individual as a suspect, arrestee, or criminal defendant. As this information does not implicate the named individual’s right to privacy, the sheriff may not withhold it under section 552.101 on that basis. However, we will consider the sheriff’s remaining argument against disclosure.

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.

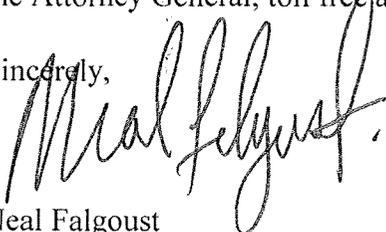
Fam. Code § 261.201(a), (k). We agree the report submitted as Exhibit B2 was used or developed in an investigation of alleged child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Although the requestor is the parent of the child named in the report, she is named as a suspect in the alleged abuse. Thus, the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Rather, the sheriff must withhold the information submitted as Exhibit B2 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, the sheriff need not release information that is not responsive to the request. 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 under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the information submitted as Exhibit B2 under section 552.101 of the Government Code in conjunction with section 261.201 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/tf

Ref: ID# 425316

Enc. Submitted documents

c: Requestor
(w/o enclosures)