



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2011

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

OR2011-11595

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# 426617 (PIR No. 2011-2579).

The Montgomery County Sheriff's Office (the "sheriff") received a request for any records pertaining to two named individuals and a specified address. 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.

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 section encompasses the doctrine of common-law privacy. Common-law privacy 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. This office has found 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) (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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the requestor asks the sheriff for all records associated with two named individuals, thus implicating these individuals' right to privacy. Therefore, to the extent the sheriff maintains any law enforcement records in which either of the named individuals are listed as a suspect, arrestee, or criminal defendant, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that you have submitted records in which the named individuals are not listed as suspects, arrestees, or criminal defendants. These records do not constitute a compilation of the individuals' criminal history and may not be withheld under section 552.101 on this basis. However, we will consider your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses 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. Fam. Code § 58.007. 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.

Id. § 58.007(c). We have reviewed report 03A004912 and find it involves a juvenile runaway. Thus, we agree this information involves a juvenile engaged in conduct indicating a need for supervision and is subject to section 58.007. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). It does not appear that any of the exceptions in section 58.007 apply. Therefore, report 03A004912 is confidential pursuant to

section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he 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.

Fam. Code § 261.201(a). Upon review, we agree report 99A017774 relates to an investigation of alleged or suspected child abuse conducted by the sheriff. *See id.* § 261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code §§ 22.021(b)(1) (providing “child” has the meaning as provided by Penal Code section 22.011(c)); .011(c)(1) (defining “child” for purposes of Penal Code section 22.021 as person under 17 years of age). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude report 99A017774 is confidential pursuant to section 261.201 of the Family Code, and the sheriff must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, to the extent the sheriff maintains any law enforcement records in which either of the named individuals are listed as a suspect, arrestee, or criminal defendant, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold report 03A004912 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The sheriff must withhold report 99A017774 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tf

Ref: ID# 426617

Enc. Submitted documents

c: Requestor
(w/o enclosures)