



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2011

Chief Deputy C. R. Servise
Burnet County Sheriff's Office
P.O. Box 1249
Burnet, Texas 78611

OR2011-11977

Dear Chief Deputy Servise:

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# 427191 (Burnet County OR-0803).

The Burnet County Sheriff's Office (the "sheriff") received a request for incident or offense reports made in response to complaints from three named individuals or anyone located at two different addresses. You state some information has been released to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, 552.137, 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. This section encompasses information protected by other statutes. You seek to withhold a CR-3 crash report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code provides, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who

provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the sheriff with two of the required pieces of information. Thus, the sheriff must withhold the CR-3 form you have marked under section 552.101 in conjunction with section 550.065(b).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. 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). Under section 58.007, juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You assert the reports you have marked are subject to section 58.007. Upon review, we agree the marked information involves juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, the sheriff must withhold the reports you have marked under section 552.101 in conjunction with section 58.007(c).¹

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

(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

¹As our ruling for this information is dispositive, we need not address your remaining arguments against the release of portions of this information.

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.

See id. § 261.201(a). You state the report you have marked pertains to an investigation of injury to a child. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261); *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). Upon review, we agree the report you have marked constitutes a record used or developed in an investigation under chapter 261. You have not indicated the sheriff has adopted a rule that governs the release of this information in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude the report you have marked is confidential under section 261.201. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the sheriff must withhold the report you have marked under section 552.101 in conjunction with section 261.201.²

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code. Section 411.083 pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See Open Records Decision No. 565 (1990)*. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information in accordance with chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other

²As our ruling for this information is dispositive, we need not address your remaining arguments against the release of portions of this information.

criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Additionally, CHRI does not include information relating to routine traffic violations. *See id.* § 411.082(2)(B). You assert portions of the information, which you have marked, are confidential pursuant to section 411.083. Upon review, we find some of the information you have marked does not constitute CHRI for purposes of chapter 411. Accordingly, the sheriff may not withhold this information, which we have marked for release, under section 552.101 in conjunction with section 411.083. However, we conclude the remaining information you have marked constitutes CHRI for purposes of chapter 411 and the sheriff must withhold this information under section 552.101 on that basis.

Common-law privacy, which is also encompassed by section 552.101 of the Government Code, 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 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. 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) (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 information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing information of no legitimate public interest. Consequently, the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the report you have marked pertains to a felony and the statute of limitations has not expired. You further state the Burnet County District Attorney’s Office states release of this information at this time would be detrimental to future prosecutorial efforts should a suspect later be identified. Based on these representations, we conclude that release of the information at issue 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). Accordingly, we conclude section 552.108(a)(1) is generally applicable to the marked information.

As you acknowledge, 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*, and includes a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state has been released, the sheriff may withhold the marked information under section 552.108(a)(1).³

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

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

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)). Upon review, we find some of the information you have marked does not consist of motor vehicle record information. Consequently, this information, which we have marked for release, may not be withheld under section 552.130. However, we conclude the sheriff must withhold the remaining information you have marked, in addition to the information we have marked, under section 552.130.⁴

Finally, you raise section 552.147 of the Government Code for portions of the remaining information. Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147. Upon review, we agree the sheriff may withhold the social security numbers you have marked under section 552.147.⁵

In summary, the sheriff must withhold the information you have marked under section 552.101 of the Government Code in conjunction with (1) section 550.065(b) of the Transportation Code, (2) section 58.007 of the Family Code, and (2) section 261.201 of the Family Code. Except for the information we have marked for release, the sheriff must withhold the information you have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The sheriff must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Except for basic information, the sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code. Except for the information we have marked for release, the sheriff must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code. The social security numbers you have marked may be withheld under section 552.147 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, or call the Office of the Attorney General's Open Government Hotline, toll free,

⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number, a Texas license plate number, and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 427191

Enc. Submitted documents

c: Requestor
(w/o enclosures)