



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2011

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

OR2011-12193

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# 427677.

The Fort Bend County Sheriff's Office (the "sheriff") received two requests from the same requestor for records pertaining to himself, his child, four named individuals, and two specified addresses during a specified time period. You indicate the sheriff has released some information to the requestor. You claim the submitted 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 section encompasses the doctrine of common-law privacy, which protects information if (1) it 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). 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 seeks access to unspecified law enforcement records relating to himself, his child, and four individuals named in his request. Thus, this request requires the sheriff to compile these individuals' criminal histories and thereby implicates their privacy interests. We note that the requestor has a special right of access under section 552.023 of the Government Code to any information that would be excepted from public disclosure to protect his own privacy and his minor child's privacy. *See* Gov't Code § 552.023. Therefore, information relating to the requestor or his child may not be withheld as criminal history under section 552.101 in conjunction with common-law privacy. However, to the extent that the sheriff maintains any law enforcement records in which the other four named individuals are listed as suspects, arrestees, or criminal defendants, the sheriff must withhold any such 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 four named individuals are not listed as suspects, arrestees, or criminal defendants. These records do not constitute a compilation of the four named individuals' criminal histories and may not be withheld under section 552.101 on that basis. We will consider your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. 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 conduct. *See id.* § 51.02(2). Section 58.007 provides, in part:

(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.

...

(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:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j)(2). Upon review, we agree reports 11-15326 and 11-15388 are law enforcement records of a juvenile runaway; therefore, we agree that these reports involve a juvenile engaged in conduct in need of supervision. *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"). Thus, reports 11-15326 and 11-15388 are generally confidential under section 58.007(c). We note, however, that the requestor is the parent of the juvenile suspect listed in these reports. As such, the requestor has a right of access under section 58.007(e) to law enforcement records concerning his child. *Id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your other arguments against disclosure of reports 11-15326 and 11-15388 under sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code also encompasses article 63.017 of the Code of Criminal Procedure, which provides the following:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. You contend reports 11-15326 and 11-15388 are confidential under article 63.017 of the Code of Criminal Procedure. For purposes of article 63.017, “clearinghouse” is defined as the missing children and missing persons information clearinghouse, which is established within the Texas Department of Public Safety. *Id.* arts. 63.001(7), 63.002(a). Reports 11-15326 and 11-15388 consist of incident reports that were created by the sheriff. These incident reports are not clearinghouse records for purposes of article 63.017. Therefore, the sheriff may not withhold reports 11-15326 and 11-15388 under section 552.101 in conjunction with article 63.017. *See id.* arts. 63.001(7), 63.002(a).

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides, in pertinent part:

(a) [T]he 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, 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 [Texas Department of Family and Protective Services] 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.

(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[.]

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). We note report 11-15388 was used or developed by the sheriff in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as person under 17 years of age). Accordingly, we find report 11-15388 is within the scope of section 261.201. However, the submitted information reveals the requestor is the father of the alleged child victim listed in report 11-15388 and is not the individual alleged to have committed the abuse. *See id.* § 261.201(k). Therefore, the sheriff may not withhold report 11-15388 from the requestor under section 261.201(a). *Id.* Section 261.201(l)(2) states, however, that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your other arguments against disclosure of report 11-15388 under sections 552.101 and 552.108 of the Government Code along with the remaining submitted reports.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report 11-16458 pertains to a pending criminal investigation by the sheriff. Based on your representation and our review, we conclude release of report 11-16458 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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to report 11-16458.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You inform us that reports 11-12823, 11-15326, and 11-15388 pertain to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude that section 552.108(a)(2) is generally applicable to reports 11-12823, 11-15326, and 11-15388.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127. We further note basic information includes the identity of the complainant. *Id.* at 4. The complainant in report 11-15388 is also the reporting party. Section 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld. Fam. Code § 261.201(l)(3). Thus, with the exception of basic information, report 11-16458 may be withheld under section 552.108(a)(1) of the Government Code and reports 11-12823, 11-15326, and 11-15388 may be withheld under section 552.108(a)(2) of the Government Code. However, in the basic information for report 11-15388, the sheriff must withhold the identifying information of the reporting party we have marked under section 552.101 of the Government Code in conjunction with 261.201(l)(3) of the Family Code.

Lastly, you raise common-law privacy for the remaining basic information in report 11-15388. As previously noted, the requestor is the parent of the minor child whose privacy rights are at issue in report 11-15388 and, therefore, has a special right of access to information that would ordinarily be withheld to protect the minor child’s privacy interests. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles). Accordingly, the sheriff may not withhold the remaining basic information in report 11-15388 from this requestor under section 552.101 in conjunction with common-law privacy.

In summary, to the extent that the sheriff maintains any law enforcement records in which the four named individuals are listed as suspects, arrestees, or criminal defendants, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, report 11-16458 may be withheld under section 552.108(a)(1) of the Government Code and reports 11-12823, 11-15326, and 11-15388 may be withheld under section 552.108(a)(2) of the Government Code. However, in releasing basic information for report 11-15388, the sheriff must withhold the identifying information of the reporting party, which we have

marked, under section 552.101 of the Government Code in conjunction with 261.201(1)(3) of the Family Code.¹

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/agn

Ref: ID# 427677

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As noted, the requestor has a special right of access to some of 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.