



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 23, 2011

Mr. Robert E. Etlinger  
Assistant County Attorney  
Guadalupe County  
101 East Court Street, Suite 104  
Seguin, Texas 78155-5779

OR2011-12204

Dear Mr. Etlinger:

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# 427694.

The Guadalupe County Sheriff's Office (the "sheriff") received six requests from the same requestor for all incident reports during a specified time period involving eight named persons, including several specified incidents. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address the sheriff's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See Gov't Code* § 552.301(b). While you raised section 552.108 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.101 until June 24, 2011, after that deadline had passed. Consequently, as to your claims under section 552.101, we find the sheriff failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information

is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments under that exception, along with your timely raised arguments under section 552.108.

Next, you state some of the responsive information was the subject of a previous request for information from this requestor, in response to which this office issued Open Records Letter No. 2010-09910 (2010). In that ruling, we concluded, among other things, that the request for all reports involving a named person during a specified time implicated the named individual's right to privacy; thus, any reports which depicted the named individual as a suspect, arrestee, or criminal defendant were withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note in this instance the requestor seeks several specified reports regarding the same named individual. Therefore, as to the reports specified by the requestor, the circumstances have changed, and the sheriff may not rely on the previous ruling as a previous determination. However, as to any remaining reports regarding that named individual that were subject to the prior ruling, we have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-09910 was based have changed. Accordingly, with respect to the remaining reports regarding that named individual, the sheriff may continue to rely on Open Records Letter No. 2010-09910 as a previous determination and withhold or release such information in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, as to the reports specified by the requestor, we will consider your arguments against disclosure.

We note you have redacted the identities of witnesses, juveniles, and alleged sexual assault victims from the submitted information. However, you do not assert, nor does our review of the records indicate, you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the sheriff should refrain from redacting any information it is not authorized to

withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. See Gov't Code § 552.302.

We now turn to your arguments against disclosure of 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." *Id.* § 552.101. This section encompasses the common-law right to 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 met. *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) (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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis.

In this instance, the requestor seeks, in part, records pertaining to "all incidents" during a specified time period regarding the named individuals. This part of the request requires the sheriff to compile unspecified police records concerning the named individuals, thus implicating such individuals' rights to privacy. Therefore, to the extent the sheriff maintains unspecified law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information related to incidents specified by the requestor and information in which none of the named individuals are depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the named individuals' common-law privacy concerns. Therefore, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. Section 58.007 provides, in relevant 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.

Fam. Code § 58.007(c); *see also id.* § 51.02(2) (defining “child” as a person ten years of age or older and under seventeen years of age at time of commission of crime). We find report numbers 02-09482, 00-06520, 04-10509, and 02-4647, which we have marked, involve juveniles engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). It does not appear any of the exceptions in section 58.007 apply. *See id.* § 58.007(e)-(i). Therefore, the reports we have marked are confidential and must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 05-07563 and 98-07955 resulted in conviction. You inform us the remaining submitted reports did not result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) applies to the remaining reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (summarizing types of information

considered to be basic information), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976). Thus, with the exception of basic information, the department may withhold the remaining submitted reports under section 552.108(a)(2) of the Government Code.

We note portions of the information in report numbers 05-07563 and 98-07955 are protected by section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure “information [that] 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; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]” 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)(1)-(2)). Therefore, the sheriff must withhold the information we have marked under section 552.130 in report numbers 05-07563 and 98-07955.<sup>2</sup> As no further exceptions to disclosure have been raised for these two reports, the remaining information in report numbers 05-07563 and 98-07955 must be released to the requestor.

In summary, to the extent the sheriff maintains unspecified law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold report numbers 02-09482, 00-06520, 04-10509, and 02-4647 under section 552.101 in conjunction with section 58.007 of the Family Code. With the exception of basic information, which must be released, the sheriff may withhold the remaining reports except numbers 05-07563 and 98-07955 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the information we have marked in report numbers 05-07563 and 98-07955 under section 552.130 of the Government Code. The remaining information in report numbers 05-07563 and 98-07955 must be released to the requestor.

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

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup> We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing the withholding of ten categories of information, including Texas driver’s license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 427694

Enc. Submitted documents

c: Requestor  
(w/o enclosures)