



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 26, 2011

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County Attorney's Office  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2011-13887

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# 430907.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information relating to three specified cases involving five named individuals. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.<sup>1</sup>

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 exception encompasses the doctrine of common-law privacy, which 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. *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*

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<sup>1</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

*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 individual has significant privacy interest in compilation of one's criminal history). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Although you contend the submitted information is protected by common-law privacy as a compilation of criminal records, we note the requestor specifically seeks access to records of three specified cases involving the five individuals identified in the request. Thus, the present request neither requires the sheriff to compile the individuals' criminal histories nor implicates their privacy interests. We therefore conclude the sheriff may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in 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; and

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). You contend the submitted information related to case numbers 08-26086 and 10-23287 is confidential under section 261.201. We find the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code or in providing services as a result of an investigation, so as to be generally confidential under section 261.201(a)(2). *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261), 101.003 (defining “child” for purposes of Fam. Code title 5); Penal Code § 22.04(c) (defining “child” for purposes of offense of injury to a child). In this instance, however, the requestor is a parent of the children who were the victims of the alleged or suspected abuse or neglect, and the requestor is not accused of committing the abuse or neglect. Therefore, the sheriff may not withhold the information related to case numbers 08-26086 and 10-23287 from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Section 261.201(l) further provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will consider your other claims for the information related to case numbers 08-26086 and 10-23287 and the submitted information related to case number 03-4883.

Section 552.108(a)(2) 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 . . . 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 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, and have provided a letter from the sheriff’s office confirming, the submitted information is related to closed cases that did not result in a conviction or a deferred adjudication. Based on your representations and the sheriff’s letter, we conclude section 552.108(a)(2) of the Government Code is generally applicable to all of the submitted information.

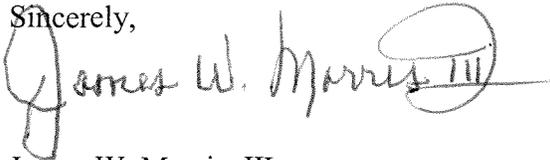
We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff must release basic information, including detailed descriptions of

the offenses, even if the information does not actually appear on the front page of an offense or arrest report. Except for basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup> In releasing basic information with respect to case number 10-23287, the sheriff must withhold the types of information we have marked that identify the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.<sup>3</sup>

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](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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 430907

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As we are able to make this determination, we need not address your other claim under section 552.101 of the Government Code.

<sup>3</sup>We note the requestor has a right of access in this instance to information the sheriff would be required to withhold from the general public. Should the sheriff receive another request for this same information from a different requestor, the sheriff should resubmit this information and request another ruling. See Gov't Code §§ 552.301(a), .302.