



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

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

OR2011-14695

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# 432726.

The Montgomery County Sheriff's Department (the "sheriff") received a request for all information related to two named individuals and two specified addresses. You state the sheriff redacted driver's license numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You state you will redact social security numbers under section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

²Section 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. Gov't Code § 552.147(b).

the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to one of the named individuals specified in the request. To the extent information responsive to the remainder of the request existed on the date the sheriff received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. You raise section 552.101 in conjunction with common-law privacy for portions of case numbers 03A044976, 06A014196, and 11A011267. Upon review, we find some of the information in case numbers 03A044976, 06A014196, and 11A011267 is highly intimate or embarrassing and is not of legitimate public concern; therefore, the sheriff must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. Upon review, we conclude the remaining information in case numbers 03A044976, 06A014196, and 11A011267 is not confidential under common-law privacy and the sheriff may not withhold any of the remaining information in case numbers 03A044976, 06A014196, and 11A011267 under section 552.101 on that ground.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit 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). Upon review, the sheriff must withhold the driver's license information we have marked in case numbers 03A044976, 06A014196, and 11A011267 under section 552.130.

You ask this office whether the sheriff may disclose case numbers 03A044976, 06A014196, and 11A011267 to the requestor pursuant to an interagency transfer. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an

unrestricted flow of information between governmental bodies. *See* Attorney General Opinion No. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of information is not permissible where the applicable statute enumerates the specific entities to which information encompassed by the statute may be disclosed, and the enumerated entities do not include the requesting governmental body. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988); *see also* Attorney General Opinion GA-0055.

We note common-law privacy is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Furthermore, we note that release pursuant to the interagency transfer doctrine does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the sheriff does not waive its interests in withholding the information at issue by exercising its discretion under the interagency transfer doctrine. However, we note that the driver's license information we have marked in case numbers 03A044976, 06A014196, and 11A011267 is subject to section 552.130 of the Government Code, which has its own access provision governing release of information. *See* Gov't Code § 552.130(b). Consequently, the driver's license information we have marked in case numbers 03A044976, 06A014196, and 11A011267 must be withheld if the sheriff chooses to release the information at issue pursuant to the interagency transfer doctrine. The sheriff has the discretion to release the remaining information in case numbers 03A044976, 06A014196, and 11A011267 to this requestor under the interagency transfer doctrine.

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" *Id.* § 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 case numbers 11A001302 and 11A004213 relate to pending criminal investigations and prosecutions. Based on your representations and our review, we conclude that the 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). Thus, section 552.108(a)(1) is generally applicable to case numbers 11A001302 and 11A004213.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information

deemed public by *Houston Chronicle*). We note basic information does not include information subject to section 552.130 of the Government Code. Therefore, with the exception of basic information, which must be released, the sheriff may generally withhold case numbers 11A001302 and 11A004213 under section 552.108(a)(1) of the Government Code.

We note that the requestor is an investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114 of the Government Code allows, among other things, for DFPS to obtain criminal history record information (“CHRI”) concerning an individual who is the subject of a report of abuse or neglect of a child. *See Gov’t Code* § 411.114(a)(4), (a)(2)(I). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2).

In this instance, the requestor does not state whether the individual who is the subject of case numbers 11A001302 and 11A004213 is a suspect in a report of abuse or neglect of a child. Therefore, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the information at issue and must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). Accordingly, if the individual to whom case numbers 11A001302 and 11A004213 pertain is a suspect in a report of abuse or neglect of a child, then the sheriff must release information that shows the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See Open Records Decision No. 451 (1986)* (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). The sheriff must also release the basic information for case numbers 11A001302 and 11A004213. However, the remaining information in case numbers 11A001302 and 11A004213 may be withheld under section 552.108(a)(1) of the Government Code. If the individual that is the subject of case numbers 11A001302 and 11A004213 is not a suspect in a report of abuse or neglect of a child, then, except for basic information, the sheriff may withhold case numbers 11A001302 and 11A004213 under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the information we have marked under section 552.130 of the Government Code, the sheriff has the discretion to release case numbers 03A044976, 06A014196, and 11A011267 to the requestor under the interagency transfer doctrine. Should the sheriff choose not to exercise its discretion under the interagency transfer doctrine, the sheriff must withhold the information we have marked in case numbers 03A044976, 06A014196, and 11A011267 under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the driver’s license information we have marked under section 552.130 of the Government Code. If the individual to whom case numbers 11A001302 and 11A004213 pertain is a suspect in a report of abuse or neglect of a child, then the sheriff must release information that shows the types of allegation made and

whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. However with the exception of basic information, the remaining information in case numbers 11A001302 and 11A004213 may be withheld under section 552.108(a)(1) of the Government Code. If the individual that is the subject of case numbers 11A001302 and 11A004213 is not a suspect in a report of abuse or neglect of a child, then, except for basic information, the sheriff may withhold case numbers 11A001302 and 11A004213 under section 552.108(a)(1) of the Government Code. The sheriff must release the remaining information.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 432726

Enc. Submitted documents

c: Requestor
(w/o enclosures)