



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2011

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

OR2011-15362

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# 433587.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information pertaining to calls to a specified address in 2011, including report numbers 11-13486, 11-15464, 11-18268, and 11-19376. You provide documentation reflecting the sheriff released some information to the requestor. You claim the submitted 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 submitted representative sample of information.¹

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, 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See 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. You contend the present request requires the sheriff to compile the criminal history of a named individual. After reviewing the request and the submitted information, however, we find the requestor is seeking specified reports. Accordingly, we find this request does not require the sheriff to compile unspecified law enforcement records; thus, the request does not implicate an individual's common-law right to privacy. Therefore, 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 also encompasses information protected by other statutes, such as 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 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;
or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

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

Fam. Code § 261.201(a)(1)-(2). You contend report number 11-13486 constitutes a record of child abuse or neglect made confidential by section 261.201. However, this report pertains to an investigation of a domestic disturbance between two adults. You have not submitted any arguments explaining how this information was used or developed in an investigation conducted under chapter 261. Consequently, you failed to adequately demonstrate how the information at issue is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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). We therefore conclude section 261.201 is not applicable to report number 11-13486, and it may not be withheld on that basis.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) 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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the information at issue relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. Gov't Code §§ 552.108(a)(2), .301(e)(1)(A).

You represent that report numbers 11-18268 and 11-19376 pertain to criminal cases that are pending with the Fort Bend District Attorney's Office and the sheriff, respectively. Based upon these representations, we conclude the release of report numbers 11-18268 and 11-19376 at this time would interfere with the detection, investigation, or prosecution of crime. We therefore agree section 552.108(a)(1) is applicable to this information. *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). You also represent report numbers 11-13486 and 11-15464 pertain to closed cases that did not result in conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to report numbers 11-13486 and 11-15464.

However, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff may withhold report numbers 11-18268 and 11-19376 under section 552.108(a)(1) of the Government Code and report numbers 11-13486 and 11-15464 under section 552.108(a)(2) of the Government Code.

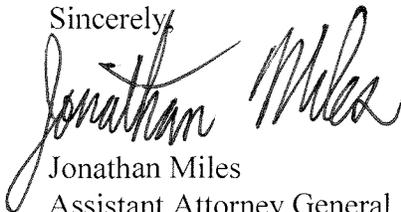
Next, you raise section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for the basic information. Section 552.101 also encompasses section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National 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. Upon review, we find none of the basic information contains confidential CHRI. Accordingly, the sheriff may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary, with the exception of the basic information, the sheriff may withhold report numbers 11-18268 and 11-19376 under section 552.108(a)(1) of the Government Code and report numbers 11-13486 and 11-15464 under section 552.108(a)(2) of the Government Code. The basic information from each report must be released.²

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/agn

Ref: ID# 433587

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the basic information contains an arrestee's social security number. 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.