



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2011

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

OR2011-18102

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# 438356.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all information related to twenty specified offense reports involving a named individual and a copy of a named detective's video interview of the named individual for a specified case. 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

Initially, we note a portion of the submitted information contains documents that have been filed with a court, which are subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code § 552.022(a)). Although you assert this information is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *Id.* §§ 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *see* Open Records Decision No. 177 (1977) (law enforcement exception may be waived by governmental body); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the sheriff may not withhold the information subject to section 552.022, which we have marked, under section 552.108. As you raise no additional exceptions to disclosure for this information, it must be released.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part as follows:

(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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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. *See id.* § 51.02(2). You seek to withhold offense report number 01-0006257 under section 58.007(c) of the Family Code. Upon review, we agree this report, which we have marked, involves a child engaged in delinquent conduct occurring after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). Further, it does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the sheriff must withhold offense report number 01-0006257 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides as follows:

(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.

Id. § 261.201(a). You state offense report numbers 09-10976 and 10-1534 are confidential under section 261.201 of the Family Code. Upon review, we agree offense report number 09-10976 was used or developed in an investigation of alleged or suspected child neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(4) (defining “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). As you do not indicate the sheriff has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we determine offense

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

report number 09-10976 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ However, we find you have not demonstrated how offense report number 10-1534, which is a harassment investigation involving an adult victim, pertains to an investigation of alleged or suspected abuse or neglect under chapter 261. Therefore, we conclude offense report number 10-1534 is not within the scope of section 261.201 of the Family Code, and the sheriff may not withhold it under section 552.101 on that basis.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state offense report numbers 08-18169 and 09-24540 relate to pending criminal investigations and offense report number 10-29059 relates to a pending criminal prosecution with the Fort Bend County District Attorney’s Office. You also state release of the information at issue would interfere with law enforcement or prosecution. Based on your representations and our review, we conclude release of offense report numbers 08-18169 and 10-29059 would interfere with the detection, investigation, or prosecution of crime, and we 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.*, 536 S.W.2d 559 (Tex. 1976).

We note, however, offense report number 09-24540 pertains to a harassment that occurred on September 1, 2009. The longest possible statute of limitations for this offense is two years. *See* Pen. Code § 42.07(c) (harassment is Class A or B misdemeanor); Crim. Proc. Code art. 12.02(a) (indictment or information on Class A or Class B misdemeanor may be presented within two years from date of commission of offense, and not afterward). You have neither informed this office any criminal charges were filed within the limitations period nor explained how release of the information would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has run. Thus, we find the sheriff has failed to demonstrate the applicability of section 552.108(a)(1) to offense report number 09-24540, and it may not be withheld on that basis.

You assert offense report numbers 03-13186 , 03-15918, 03-22354, 04-3889, 05-25786, 07-13141, 07-6412, 08-2082, 08-2684, 08-4724, 09-9614, 09-12021, 10-1534, 10-2273, and 10-20970 are excepted from disclosure under section 552.108(a)(2) of the Government

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). You state the offense reports at issue pertain to concluded investigations that did not result in convictions or deferred adjudications. Based on your representations and our review, we find section 552.108(a)(2) is applicable to offense report numbers 03-13186, 03-15918, 03-22354, 04-3889, 05-25786, 07-13141, 08-2082, 08-2684, 08-4724, 09-9614, 09-12021, 10-1534, 10-2273, and 10-20970. We note, however, Exhibit B, which you provided as supporting documentation, states offense report number 07-6412 resulted in deferred adjudication. Thus, we find report number 07-6412 may not be withheld under section 552.108(a)(2).

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* 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information under section 552.130 of the Government Code. Thus, with the exception of basic information, the sheriff may withhold offense report numbers 08-18169 and 10-29059 under section 552.108(a)(1) of the Government Code and offense report numbers 03-13186, 03-15918, 03-22354, 04-3889, 05-25786, 07-13141, 08-2082, 08-2684, 08-4724, 09-9614, 09-12021, 10-1534, 10-2273, and 10-20970 under section 552.108(a)(2) of the Government Code.⁴

Section 552.101 of the Government Code encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See Occ. Code* §§ 151.001-165.160. Section 159.002 of the MPA provides, in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure.

section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” *See* Open Records Decision No. 546 (1990). Upon review, we find the medical records and information obtained from medical records, which we have marked, are subject to the MPA. Accordingly, the sheriff may only release this marked information in accordance with the MPA.

Section 552.101 of the Government Code 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. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082 (2)(B) (definition of CHRI does not include driving record information). Upon review, we find none of the remaining information consist of CHRI for purposes of chapter 411; thus, the sheriff may not withhold the remaining information under section 552.101 in conjunction with chapter 411 of the Government Code and federal law.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The type of information considered intimate and 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 343 (1982), 455 (1987). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated how the remaining information is highly intimate or embarrassing. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

We note the remaining information contains information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* 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). We have marked the motor vehicle record information that must be withheld under section 552.130 of the Government Code.

We also note a portion of the remaining information is a partial credit card number. Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device").⁵ Upon review, we find the sheriff must withhold the partial credit card number we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c).

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note section 552.137 is not applicable to the general e-mail address of a business. The e-mail addresses we have marked are not any of the types specifically excluded by section 552.137(c). Accordingly, the sheriff must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the e-mail addresses have affirmatively consented to their release under section 552.137(b).⁶

In summary, the sheriff must withhold offense report number 01-0006257 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The sheriff must withhold offense report number 09-10976 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the sheriff may withhold offense report numbers 08-18169 and 10-29059 under section 552.108(a)(1) of the Government Code and offense report numbers 03-13186, 03-15918, 03-22354, 04-3889, 05-25786, 07-13141, 08-2082, 08-2684, 08-4724, 09-9614, 09-12021, 10-1534, 10-2273, and 10-20970 under section 552.108(a)(2) of the Government Code. The sheriff may only release the medical records and information obtained from the medical records, which we have marked, in accordance with the MPA. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, the partial credit card number we have marked under section 552.136 of the Government Code, and the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release under section 552.137(b). The remaining information must be released.⁷

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

⁶We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁷We note the remaining information contains social security numbers. 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. *See* Gov't Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read "Melanie J. Villars". The signature is fluid and cursive, with a long horizontal stroke at the end.

Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/ag

Ref: ID# 438356

Enc. Submitted documents

c: Requestor
(w/o enclosures)