



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2011

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

OR2011-18110

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# 438545 (ORR# 2011-5046).

The Montgomery County Sheriff's Office (the "sheriff") received a request for any records involving the requestor's client and another named individual, including records for two specified cases. You state the sheriff has released the records for the specified cases, as well as some other responsive information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *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.

The present request, in part, seeks any records pertaining to an individual other than the requestor's client. We find that this request for unspecified law enforcement records implicates this individual's right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual who is not the requestor's client as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, that you have submitted information in which this individual is not listed as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate this individual's right to privacy. Accordingly, we will address your argument for this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding former section 51.14(d) of Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile criminal conduct occurring before January 1, 1996, are governed by former section 51.14, which was continued in effect for that purpose.¹ Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

¹Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. In this instance, the information at issue pertains to an incident that allegedly occurred in 1994, and lists two suspects. Out of the two suspects, one qualified as a “child” at the time of the offense. *See* Fam. Code § 52.01 (defining “child” for purposes of title 3 of Family Code as individual who is ten years of age or older and under seventeen years of age). Further, the requestor does not fall within one of the categories in section 51.14(d) under which inspection of the records would be permitted. Therefore, we agree former section 51.14(d) is applicable to the information at issue. *See id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct engaged in by child). Thus, the sheriff must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with former section 51.14.²

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual who is not the requestor’s client as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we marked under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

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

Ref: ID# 438545

Enc. Submitted documents

c: Requestor
(w/o enclosures)