



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2011

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2011-18432

Dear Ms. Lentz:

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# 439152.

The Williamson County Sheriff's Office (the "sheriff") received a request for records pertaining to calls made by or regarding a named individual and a specified address. We note you have marked social security numbers for redaction under section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹Section 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).

²We 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.

Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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. *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. This office has found 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. U.S. 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.

In this instance, the request, in part, seeks records pertaining to a named individual. Thus, this request requires the sheriff to compile the named individual's criminal history. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual 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. However, we note you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. Accordingly, this information does not implicate the privacy interest of the named individual. Thus, we will address your remaining arguments against the disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201(a) 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.

Fam. Code § 261.201(a). Upon review, we agree incident report number C06-10-0212 was used or developed in an investigation of alleged child endangerment. Therefore, this

information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *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). You have not indicated the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, incident report number C06-10-0212 is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).³

Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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). Upon review, we agree incident report numbers C08-07-2799J, C07-10-5506J, and C06-03-6963J involve juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this report. Therefore, incident report numbers C08-07-2799J, C07-10-5506J, and C06-03-6963J are confidential under

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.⁴

As noted above, common-law privacy protects the specific types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*, which includes 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. *See Indus. Found.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See Open Records Decision Nos. 393 at 2 (1983); 339 (1982); see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); *Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).* Incident report number C10-12-01589 and the submitted recordings pertain to a charge of alleged sexual assault. The requestor in this case knows the identity of the alleged victim. In this instance, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. Therefore, the sheriff must withhold incident report number C10-12-01589 and the submitted recordings in their entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.⁵ We also conclude the information we have marked in the remaining records is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note the remaining information includes a court-filed document that is subject to section 552.022(a)(17). Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public

⁴As our ruling for this information is dispositive, we do not address your remaining arguments against its disclosure.

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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)). You seek to withhold the court-filed document, which we have marked, under section 552.108 of the Government Code. However, section 552.108 is discretionary and does not make information confidential under the Act. *Id.* §§ 3-21, 23-26, 28-37 (providing for “confidentiality” of information under specified exceptions). Therefore, the sheriff may not withhold the marked court-filed document under section 552.108. However, section 552.130 of the Government Code makes information confidential under chapter 552. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 21 (to be codified as an amendment to Gov't Code § 552.130) (providing for “confidentiality” of information under section 552.130). Therefore, we will address the applicability of section 552.130 to the marked court filed document.

You raise section 552.108(a)(2) of the Government Code for incident report numbers C10-07-7592, C06-09-0935, C06-12-1160, C10-11-1941, C11-1-5010, C10-04-1208, and C03-05-466. Section 552.108(a)(2) excepts from required public 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See Id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You state the information at issue relates to concluded criminal cases that did not result in convictions or deferred adjudication. Based on your representations and our review of the information, we find that section 552.108(a)(2) is applicable to incident report numbers C10-07-7592, C06-09-0935, C06-12-1160, C10-11-1941, C11-1-5010, C10-04-1208, and C03-05-466.

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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The sheriff must release basic front-page information under section 552.108(c), even if the information does not literally appear on the

front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the court-filed document we marked and the basic information, the sheriff may withhold incident report numbers C10-07-7592, C06-09-0935, C06-12-1160, C10-11-1941, C11-1-5010, C10-04-1208, and C03-05-466 under section 552.108(a)(2) of the Government Code.⁶

Lastly, you claim portions of the remaining information, which you have marked, are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a motor vehicle operator's license or driver's license 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(a)(1)). Upon review, we agree the sheriff must withhold the driver's license numbers you have marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual 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 (1) incident report number C06-10-0212 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) incident report numbers C08-07-2799J, C07-10-5506J, and C06-03-6963J under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; and (3) incident report number C10-12-01589 and the submitted recordings in their entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Except for the marked court-filed document and the basic information, the sheriff may withhold incident report numbers C10-07-7592, C06-09-0935, C06-12-1160, C10-11-1941, C11-1-5010, C10-04-1208, and C03-05-466 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the information you have marked under section 552.130 of the Government Code. The remaining information must be released.

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

⁶As our ruling for this information is dispositive, we do not address your remaining arguments against its disclosure.

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 'Ana Carolina Vieira', with a long horizontal stroke extending to the right.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 439152

Enc. Submitted documents

c: Requestor
(w/o enclosures)