



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 27, 2011

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

OR2011-18992

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# 440196.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for records and domestic violence calls involving two named individuals, including information related to a specific cause number, and all calls, reports, or records involving three named individuals. You state that some information has been released to the requestor. You claim that the remaining 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 if it (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 established. *Id.* at 681-82. A compilation of an individual's criminal history

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In part, the present request requires the sheriff to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating those individuals' right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that you have submitted reports which do not list the named individuals as suspects, arrestees, or criminal defendants, and the report of the incident specified in the request. This information does not implicate the privacy interests of the named individuals. Accordingly, we address your arguments for this information.

Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(a) [T]he 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 find report number 99-2619 consists of a report used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (defining "abuse," for the purposes of chapter 261 of the Family Code as including offense of sexual assault under Penal Code section 22.011); Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.011 as person under 17 years of age). Accordingly, we determine report number 99-2619 is within the scope of section 261.201 of the Family Code. You have not indicated that 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, report number 99-2619 is confidential pursuant to section 261.201 of the Family Code. Accordingly, the sheriff must withhold report number 99-2619 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also argue that the information in jail packet P0013813/booking number10-10293 is subject to section 261.201 of the Family Code because it includes a referral to Child Protective Services. However, you have not explained, nor does the report reflect, how the information in jail packet P0013813/booking number10-10293 was used or developed in an investigation by the sheriff of child abuse or neglect under chapter 261 of the Family Code. Therefore, jail packet P0013813/booking number10-10293 is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a)(1) 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). Generally, 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* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that jail packet P0013813/booking number10-10293 relates to a pending criminal investigation. Based upon this representation, we conclude that the release of jail packet P0013813/booking number10-10293 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).

You assert that report numbers 99-7017, 99-6927, 00-8068, 00-6798, and 00-6213 are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state report numbers 99-7017, 99-6927, 00-8068, 00-6798, and 00-6213 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to report numbers 99-7017, 99-6927, 00-8068, 00-6798, and 00-6213.

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* 531 S.W.2d at 186-87. Therefore, with the exception of basic information, the sheriff may withhold jail packet P0013813/booking number10-10293 and report numbers 99-7017, 99-6927, 00-8068, 00-6798, and 00-6213 under section 552.108 of the Government Code.² We note that the

²As our ruling is dispositive, we do not address your remaining arguments against disclosure.

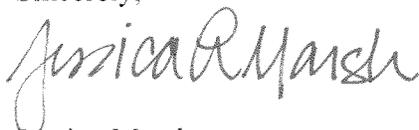
sheriff has the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, to the extent the sheriff maintains law enforcement records, other than the specified record, that list the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold report number 99-2619 in its entirety 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 jail packet P0013813/booking number 10-10293 and report numbers 99-7017, 99-6927, 00-8068, 00-6798, and 00-6213 under section 552.108 of the Government 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/bs

Ref: ID# 440196

Enc. Submitted documents

c: Requestor
(w/o enclosures)