ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2012

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

OR2012-01377

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# 443555.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all information related to four specified offense reports. 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. This exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in part:

[1]We 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.

> (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:
>
> > . . .
> >
> > (2) any information that is excepted from required disclosure under [the Act], or other law; and
> >
> > (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l)(2)-(3). You contend report number 11-2150 relates to a child abuse investigation. Additionally, we find report number 11-10560 pertains to an investigation of child abuse conducted by the sheriff. Upon review, we find report numbers 11-2150 and 11-10560 were used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to be generally

confidential under section 261.201. *See id.* §§ 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261), 101.003 (defining "child" for purposes of Fam. Code title 5). In this instance, however, the requestor is a parent of the child who was the victim of the alleged or suspected abuse, and the requestor is not accused of committing the abuse. Therefore, the sheriff may not withhold report number 11-2150 or report number 11-10560 from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will address your remaining claims under sections 552.101 and 552.108 of the Government Code for both report numbers 11-2150 and 11-10560 as well as for the remaining reports.

Section 552.108(a)(2) 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 . . . 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). Section 552.108(a)(2) is applicable only to information related to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. You state report numbers 11-10560 and 11-15939 relate to closed criminal cases that did not result in conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is generally applicable to report numbers 11-10560 and 11-15939.[2]

Although you state report numbers 11-2150 and 11-3230 also relate to closed cases, you state, and provide documentation showing, the victim in these cases was referred to the Justice of the Peace court for class C assault. Thus, we find you have failed to explain how report numbers 11-2150 and 11-3230 relate to criminal cases that concluded in final results other than conviction or deferred adjudication. Therefore, we determine the sheriff has failed to demonstrate the applicability of section 552.108(a)(2) to report numbers 11-2150 and 11-3230, and they may not be withheld on this basis.

We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 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(Tex. Civ. App.—Houston [14thDist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88. Therefore, except for basic information, the sheriff may withhold report numbers 11-10560 and 11-15939 under section 552.108(a)(2). We note

---

[2]As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 261.201(l)(3) of the Family Code provides the identity of the reporting party must be withheld. Fam. Code § 261.201(l)(3). Thus, in releasing report number 11-2150 and the basic information for report number 11-10560, the sheriff must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

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 section 411.083 of the Government Code.

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 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. You assert the remaining information contains criminal history information that is protected by common-law privacy. As noted above, criminal history information does not include driving record information. *See* Gov't Code § 411.082 (2)(B). Upon review, we find none of the information consists of criminal history information. Thus, we find you have failed to demonstrate the applicability of common-law privacy to the remaining information you seek to withhold. Consequently, the sheriff may not withhold this information 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.[3] Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1). We have marked the driver's license information that must be withheld under section 552.130.

In summary, except for basic information, the sheriff may withhold report numbers 11-10560 and 11-15939 under section 552.108(a)(2) of the Government Code. In releasing report number 11-2150 and the basic information of report number 11-10560, the sheriff must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The sheriff must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.[4]

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,

---

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

[4]We note the requestor has a right of access in this instance to information the sheriff would be required to withhold from the general public. Should the sheriff receive another request for this same information from a different requestor, the sheriff should resubmit this information and request another ruling. *See* Gov't Code §§ 552.301(a), .302. We also note the remaining information contains a social security number that does not belong to the requestor. 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).

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,

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 443555

Enc. Submitted documents

c: Requestor
(w/o enclosures)