



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2012

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

OR2012-04528

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# 448917.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports involving the requestor and a named individual. You claim that 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 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 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. *See 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. *See id.* at 681-82. This office has found that 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). We further find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You assert that the present request

requires the sheriff's office to compile the criminal history of the requestor and the other individual at issue, who is a minor. However, the requestor has a special right of access to information implicating her own privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Further, we note the requestor is the parent of the minor, and therefore has a special right of access to information that would ordinarily be withheld to protect the minor's common-law privacy. *See id.* Thus, none of the submitted information may be withheld from the requestor as a compilation of criminal history under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which 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.

...

(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.

Fam. Code § 261.201(a), (k). You assert report numbers 09-20949, 10-5437, 10-5613, 11-9390, and 11-21539 were used or developed in child abuse investigations conducted by

the sheriff's office. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of Family Code), 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). Upon review, we agree report numbers 09-20949, 10-5437, and 11-21539 are within the scope of section 261.201(a). In this instance, the requestor is the parent of the child victim listed in report numbers 09-20949, 10-5437, and 11-21539. However, this information reflects that the requestor is alleged to have committed the abuse at issue in these reports. Therefore, report numbers 09-20949, 10-5437, and 11-21539 may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). Accordingly, we find report numbers 09-20949, 10-5437, and 11-21539 are confidential under section 261.201(a) of the Family Code and the sheriff's office must withhold these reports under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*¹ However, you have failed to demonstrate how report numbers 10-5613 and 11-9390 constitute reports of alleged or suspected child abuse made under chapter 261 or that this information was used or developed in an investigation under chapter 261. Accordingly, the sheriff's office may not withhold report numbers 10-5613 and 11-9390 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses 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.

...

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03 (defining "delinquent conduct"). 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 at the time of the incident. *See id.* § 51.02(2). You raise section 58.007 for report numbers 11-9390, 11-13470, 11-17278, 11-18028, and 11-3252. We agree these reports consist of law enforcement records that involve juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, report numbers 11-9390, 11-13470, 11-17278, 11-18028, and 11-3252 are generally subject to section 58.007(c). However, the requestor is the parent of the juvenile offender listed in the reports at issue. Therefore, this requestor has a right to inspect information concerning her child under section 58.007(e). *Id.* § 58.007(e). Accordingly, report numbers 11-9390, 11-13470, 11-17278, 11-18028, and 11-3252 may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted before a governmental body releases information pursuant to section 58.007(e). *See id.* § 58.007(j)(2). Thus, we will consider your argument against disclosure of this information.

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). 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); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the release of report number 10-5613 would interfere with a pending criminal investigation. Based on your representation, we conclude section 552.108(a)(1) is applicable report

number 10-5613. 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). You state report numbers 11-9390, 11-13470, 11-17278, 11-18028, and 11-32521 are related to concluded investigations that did not result in convictions or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to these reports.

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 offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff’s office may withhold report numbers 10-5613, 11-9390, 11-13470, 11-17278, 11-18028, and 11-32521 under section 552.108 of the Government Code.²

In summary, the sheriff’s office must withhold report numbers 09-20949, 10-5437, and 11-21539 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’s office may withhold report numbers 10-5613, 11-9390, 11-13470, 11-17278, 11-18028, and 11-32521 under section 552.108 of the Government Code. The basic information for report numbers 10-5613, 11-9390, 11-13470, 11-17278, 11-18028, and 11-32521 must be released.³

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

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

³We note that the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the sheriff’s office receives another request for this information from a different requestor, the sheriff’s office must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 448917

Enc. Submitted documents

c: Requestor
(w/o enclosures)