



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2012

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2012-05187

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# 450272.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports and call logs pertaining to the requestor's daughter for a specified time period. 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 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 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

¹We 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.

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 individual at issue, who is a minor. However, 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 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). 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 information that other statutes make confidential, such as section 58.007 of the Family Code. Section 58.007 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.

...

(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 Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). For the purposes of section 58.007(j), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). Upon review, we agree report numbers 10-1546, 10-1625, 10-4560, 10-15635, and 10-16654 involve a juvenile engaged in delinquent conduct or conduct indicating a need for supervision. Thus, these reports are within the scope of section 58.007(c). However, we note the requestor in this instance is a parent of a juvenile offender listed in the reports at issue. Accordingly, these reports 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. *Id.* § 58.007(e). However, section 58.007(j)(2) states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your remaining arguments against disclosure of the reports at issue, as well as for the remaining information.

Section 552.101 of the Government Code also encompasses article 63.017 of the Code of Criminal Procedure, which provides the following:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. You contend report numbers 10-1625, 10-15635, 10-17696, and 10-27090 are confidential under article 63.017 of the Code of Criminal Procedure. For purposes of article 63.017, "clearinghouse" is defined as the missing children and missing

persons information clearinghouse, which is established within the Texas Department of Public Safety. *Id.* arts. 63.001(7), 63.002(a). The information at issue consists of incident reports and the related call slips that were created by the sheriff's office. These incident reports and call slips are not clearinghouse records for purposes of article 63.017. Therefore, the sheriff's office may not withhold the information at issue under section 552.101 in conjunction with that article. *See id.* arts. 63.001(7), 63.002(a).

Section 552.108(a)(2) 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 10-1546, 10-1625, 10-4560, 10-15635, 10-16654, 10-17696, 10-27090, and 11-4049 relate to concluded criminal investigations that did not result in conviction or deferred adjudication. Based on your representations and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable to the information at issue.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the sheriff's office may withhold report numbers 10-1546, 10-1625, 10-4560, 10-15635, 10-16654, 10-17696, 10-27090, and 11-4049 under section 552.108(a)(2) of the Government Code.² As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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

²As noted, the requestor has a special right of access to 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.

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 'NK' with a large flourish.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 450272

Enc. Submitted documents

cc: Requestor
(w/o enclosures)