ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2012-12274

Dear Mr. Walker:

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# 461050.

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for any and all offense and/or incident reports pertaining to a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

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 section encompasses the doctrine of common-law privacy, which protects information if (1) it 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 elements of the test must be established. *Id.* at 681-82. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally

not of legitimate concern to the public. In this instance, the requestor seeks access to unspecified law enforcement records relating to the named individual. Thus, this request requires the sheriff's office to compile the named individual's criminal history and thereby implicates her right to privacy.

However, we note the requestor is an investigator for the Texas Board of Nursing (the "board"). Section 411.125(a) of the Government Code provides that

> [t]he [board] is entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information maintained by [DPS] that relates to a person who:
>
> > (1) is an applicant for or the holder of a license issued by the board;
> >
> > (2) has requested a determination of eligibility for a license from the board; or
> >
> > (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov't Code § 411.125(a). Moreover, section 411.087(a) of the Government Code provides in part:

> (a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from [DPS] criminal history record information maintained by [DPS] that relates to another person is authorized to:
>
> . . .
>
> (2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). "Criminal history record information" is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Thus, under sections 411.125 and 411.087, the requestor may have a right of access to any criminal history record information about the named individual contained in the sheriff's office's records.

Accordingly, to the extent the named individual is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then the requestor is authorized to obtain criminal history record information

relating to the named individual from the sheriff's office pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .125(a). Although you also raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, if any of these conditions is met, then the sheriff's office must make available to the requestor any criminal history record information under section 411.087. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.— Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). However, if the individual at issue does not meet any of the criteria of subsections 411.125(a)(1)-(3), then the board does not have a special right of access to any criminal history record information under section 411.087 of the Government Code. In that event, to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.[1]

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,

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

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[1]In that event, we do not address your argument under section 552.108 of the Government Code, as we are able to make this determination.

Ref: ID# 461050

Enc. Submitted documents

c: Requestor
(w/o enclosures)