



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2012

Ms. Meredith L. Kennedy  
Assistant District Attorney  
Wichita County District Attorney's Office  
Wichita County Courthouse  
900 Seventh Street  
Wichita Falls, Texas 76301-2482

OR2012-12593

Dear Ms. Kennedy:

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# 461851.

The Wichita County Sheriff's Office (the "sheriff's office") received a request for (1) all PC affidavits, report narratives, court documents, and case numbers pertaining to a named individual; and (2) all of the listed information in item number one of the request for three specified cases and five specified Wichita County District Attorney's Office case numbers. You state there are no responsive documents for the requested Wichita County District Attorney's Office case numbers.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. This section encompasses the common-law right to 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

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 met. *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. U.S. 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, noting 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, in part, asks the sheriff's office for any reports involving the named individual. We find this portion of the request requires the sheriff's office to compile unspecified law enforcement records concerning the named individual, thus implicating his right to privacy. Therefore, to the extent the sheriff's office maintains any law enforcement records in which the named individual is 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.

We note, however, the requestor also asks the sheriff's office for specified case numbers involving the named individual. This portion of the request does not seek unspecified records pertaining to a named individual, and thus, is not a request for an unspecified compilation of any individual's criminal history. Therefore the sheriff's office may not withhold the submitted information pertaining to the specified case numbers under section 552.101 in conjunction with common-law privacy on this basis. Accordingly, we will consider the applicability of other exceptions to this information.

We note case numbers 00-04-0032, 99-11-0040, and 99-11-0041 are subject to section 261.201 of the Family Code. Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). Because case numbers 00-04-0032, 99-11-0040, and 99-11-0041 pertain to investigations of alleged or suspected child abuse or neglect, these case numbers are within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11 and sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); Penal Code §§ 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age), 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person under 17 years of age). You have not indicated that the sheriff’s office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, case numbers 00-04-0032, 99-11-0040, and 99-11-0041 are confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

In summary, to the extent the sheriff’s office maintains any law enforcement records in which the named individual is 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. The sheriff’s office must withhold case numbers 00-04-0032, 99-11-0040, and 99-11-0041 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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](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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/som

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

Ref: ID# 461851

Enc. Submitted documents

c: Requestor  
(w/o enclosures)