



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2012

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

OR2012-13946

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# 463755.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for police records involving two named individuals during a specified period of time and four specified police reports. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 that is 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 of privacy. Common-law privacy 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. *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 established. *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. 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 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 request is for information pertaining to two named individuals and four specified reports. Thus, this request, in part, requires the sheriff's office to compile the named individuals' criminal histories. Therefore, to the extent the sheriff's office maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, that you have submitted information responsive to the reports specified in the request. This information is not part of a criminal history compilation and, thus, does not implicate the named individuals' right to privacy. Accordingly, we will address your arguments for this information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part as follows:

(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.

Fam. Code § 261.201(a). Upon review, we find report numbers 07-20653 and 12-15179 were used or developed in investigations by the sheriff's office of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 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). Accordingly, we find that report numbers 07-20653 and 12-15179 are within the scope of section 261.201 of the Family Code. You do not inform us, and we are not aware, that the sheriff's office has adopted a rule that governs the release of this type of information; therefore, we assume no such rule exists. Given that assumption, we conclude report numbers 07-20653 and 12-15179 are confidential pursuant to section 261.201(a) of the Family Code, and the sheriff's office must

withhold this information under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 05-10484 and 06-22572 relate to concluded criminal investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to report numbers 05-10484 and 06-22572.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. 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 also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff's office may withhold report numbers 05-10484 and 06-22572 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the sheriff's office maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold such information under section 552.101 in conjunction with common-law privacy. The sheriff's office must withhold report numbers 07-20653 and 12-15179 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the sheriff's office may withhold report numbers 05-10484 and 06-22572 under section 552.108(a)(2) of the Government 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.

¹As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

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 cursive script that reads "Paigelay". The signature is written in black ink and is positioned above the typed name.

Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 463755

Enc. Submitted documents

cc: Requestor
(w/o enclosures)