



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2012

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

OR2012-14607

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# 464940.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for fourteen specified reports and any reports during the past year pertaining to six named individuals, including the requestor, or to two specified addresses. 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 claimed exceptions 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. 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

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.

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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor asks for, in part, "all police reports" pertaining to six named individuals. This request requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals, thus implicating such individuals' right to privacy. However, we note the requestor has sought, in part, records pertaining to himself and his minor daughter. The requestor has a special right of access to a compilation of his own criminal history or that of his minor child. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); *Open Records Decision No. 481 at 4* (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting any of the named individuals, with the exception of the requestor or his minor child, 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.

We note you have submitted the fourteen reports specified by the requestor. This information, along with the reports depicting the requestor or his minor child as a suspect, does not implicate any individual's privacy rights. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as articles 55.01 through 55.05 of the Code of Criminal Procedure. These statutes provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has previously determined the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You inform us, and the submitted information reflects, that a portion of the information at issue is subject to an expunction order. Based on your representation and our review, we agree report number 08-8297 is confidential under article 55.03 of the Code of Criminal Procedure and must be withheld on that basis under section 552.101 of the Government Code.²

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 11-15326 and 11-15388 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 that were created by the sheriff’s office. The incident reports are not clearinghouse records for purposes of article 63.017. Therefore, the sheriff’s office may not withhold report numbers 11-15326 and 11-15388 under section 552.101 in conjunction with that article 63.017.

²Because our ruling as to this report is dispositive, we do not address your remaining argument against its disclosure.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 provides, in relevant part:

(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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are confidential. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), a "child" is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we agree report numbers 11-15326, 11-15388, and 11-19753 are generally confidential

under section 58.007(c). However, in this instance, 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 his child under section 58.007(e). *Id.* § 58.007(e). Accordingly, the sheriff's office may not withhold these reports 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) further 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 remaining arguments against disclosure of report numbers 11-15326, 11-15388, and 11-19753.

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

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

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

(3) the identity of the person who made the report.

Id. § 261.201(a), (k), (l)(2)-(3). Upon review, we agree report numbers 08-20643, 10-4221, and 11-15388 were used or developed in investigations of alleged child abuse under chapter 261. We further find portions of report numbers 08-26190, 09-519, 09-1768, and 10-25681 were used or developed in investigations of alleged child abuse under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Therefore, this information is within the scope of section 261.201(a). We note that although the requestor is a parent of the alleged child victim, the requestor is suspected of having committed the alleged abuse at issue in report numbers 08-20643, 10-4221, 08-26190, 09-519, 09-1768, and 10-25681. Accordingly, the information at issue in these reports may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k) (parental exception to section 261.201(a) inapplicable where parent alleged to have committed abuse or neglect at issue). Thus, we conclude report numbers 08-20643 and 10-4221 and the information we have marked in report numbers 08-26190, 09-519, 09-1768, and 10-25681 are confidential under section 261.201(a) and must be withheld under section 552.101 of the Government Code.³ However, we find you have not established how the remaining information in report numbers 08-26190, 09-519, 09-1768, and 10-25681 either constitutes reports of alleged abuse or neglect under section 261.201(a)(1) or was used or developed in an investigation of alleged abuse or neglect under section 261.201(a)(2). Therefore, the remaining information in those reports is not confidential under section 261.201(a) and may not be withheld under section 552.101 on that basis.

We note the requestor is not accused of the suspected abuse in report number 11-15388. The sheriff’s office thus may not use section 261.201(a) to withhold this report from this requestor. *See id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be redacted before information is provided to a parent under section 261.201(k). *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states any information otherwise excepted from required disclosure under the Act or other law must be redacted before information is released under section 261.201(k). *Id.* § 261.201(l)(2). Therefore, we will address your remaining arguments against disclosure of report number 11-15388.

Section 552.103(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,

³Because our ruling as to report numbers 08-20643 and 10-4221 is dispositive, we do not address your remaining argument against disclosure of these reports.

investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 11-20464 and 12-4516 pertain to pending criminal investigations. Based on your representation and our review of the information, we conclude release of these reports would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to report numbers 11-20464 and 12-4516.

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). A governmental body claiming section 552.108(a)(2) must demonstrate 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). You state the remaining reports at issue did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to the remaining reports at issue.

We note, however, 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” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record information subject to section 552.130 of the Government Code. Therefore, with the exception of basic information, the sheriff’s office may withhold report numbers 11-20464 and 12-4516 under section 552.108(a)(1) and the remaining reports at issue under section 552.108(a)(2).⁴ We note basic information includes the identity of the complainant. *See* ORD 127. In report number 11-15388, the complainant is the report party for purposes of section 261.201(1)(3) of the Family Code. Therefore, in releasing basic information for report number 11-15388, the sheriff’s office must withhold the identifying information of the reporting party we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

⁴Because our ruling as to these reports is dispositive, we do not address your remaining arguments against disclosure of portions of this information.

We understand you to argue a portion of the basic information in report number 11-15388 is protected by section 552.101 of the Government Code in conjunction with common-law privacy, which was discussed above. Common-law privacy also protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). However, as noted, the requestor is a parent of the minor with the privacy interest and thus has a special right of access to information that would ordinarily be withheld to protect the child's common-law 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). Accordingly, the sheriff's office may not withhold any of the basic information from this requestor under section 552.101 on the basis of common-law privacy.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting any of the named individuals, with the exception of the requestor or his minor child, 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. The sheriff's office must withhold report number 08-8297 under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. The sheriff's office must withhold report numbers 08-20643 and 10-4221 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 11-20464 and 12-4516 under section 552.108(a)(1) of the Government Code and the remaining reports at issue under section 552.108(a)(2) of the Government Code. In releasing basic information for report numbers 08-26190, 09-519, 09-1768, and 10-25681, the sheriff's office may not release the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In releasing basic information for report number 11-15388, the sheriff's office must withhold the identifying information of the reporting party we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.⁵

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.

⁵As noted, the requestor in this instance has a special right of access under sections 58.007(e) and 261.201(k) of the Family Code and section 552.023 of the Government Code to some of the information being released. Accordingly, if the sheriff's office should receive another request for this information from a different requestor, the sheriff's office must again request an opinion from this office.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/bs

Ref: ID# 464940

Enc. Submitted documents

c: Requestor
(w/o enclosures)