

December 17, 2012

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

OR2012-20287

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# 478780.

The Fort Bend County Sheriff’s Office (the “sheriff’s office”) received a request for information involving a named individual from a specified time period. You claim 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 information you submitted.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 exception 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 elements of the test must be established. *Id.* at 681-82. A compilation of a private citizen’s criminal history is highly embarrassing information, the publication of which would be highly objectionable

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff’s office to withhold any information that is substantially different from the submitted information. *See Gov’t Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

to a reasonable person, and is generally not of legitimate concern to the public. *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 individual has significant privacy interest in compilation of one's criminal history).

In this instance, the requestor seeks access to unspecified law enforcement records involving the named individual. Thus, this request requires the sheriff's office to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent the sheriff's office maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the submitted information related to case numbers 11-3583 and 12-5169 does not depict the named individual as a suspect, arrested person, or criminal defendant. Thus, those records do not implicate the named individual's privacy interests and may not be withheld on that basis under section 552.101.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in 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.

Fam. Code § 261.201(a). You contend the submitted information related to case numbers 11-3583 and 12-5169 is confidential under section 261.201. We find the information at issue was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* §§ 101.003 (defining "child" for purposes of Fam. Code title 5), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining "child," for purposes of offense of injury to a child, as a person 14 years of age or younger). As you do not indicate the sheriff's office has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the sheriff's office must withhold the submitted information related to case numbers 11-3583 and 12-5169 in its entirety under

section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (addressing predecessor statute).

In summary, the sheriff's office must withhold (1) any information it maintains that depicts the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the submitted information related to case numbers 11-3583 and 12-5169 in its entirety under section 552.101 in conjunction with section 261.201(a) of the Family Code.²

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,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 478780

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²As we are able to make these determinations, we need not address the other exception you claim.