



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2013

Ms. Tamma Willis
McLennan County Sheriff's Office
901 Washington Avenue
Waco, Texas 76701

OR2013-06031

Dear Ms. Willis:

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# 484701.

The McLennan County Sheriff's Office (the "sheriff's office") received a request for all reports from a specified period of time concerning the requestor and four named individuals. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the doctrine of common-law 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 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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to four named individuals. This request requires the sheriff's office to compile the named individuals' criminal history and implicates the named individuals' right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the submitted information reflects the requestor is the husband of one of the individuals named in the request. Accordingly, as the spouse of this individual, he may be acting as the authorized representative of this individual. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See Gov't Code § 552.023*. Accordingly, if the requestor is not acting as his spouse's authorized representative, to the extent the sheriff's office maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as his spouse's authorized representative, he has a special right of access to the compilation of his spouse's criminal history, to the extent it exists, and it may not be withheld under section 552.101 on the basis of the common-law privacy interests of his wife. In that instance, we will address the applicability of your raised exception to the information at issue.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential, such as section 261.201 of the Family Code, which provides in pertinent 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). Upon review, we find some of the submitted information was used or developed in an investigation of suspected child abuse. *See id.* §§ 101.003(a) (defining "child" for the purposes of this section as a 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). Upon review, we agree the information at issue falls within the scope of section 261.201 of the Family Code. As you do not indicate the sheriff's office has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Therefore, we determine that the information at issue is confidential pursuant to section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff's office must withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, to the extent the sheriff's office maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as his spouse's authorized representative, he has a special right of access to the compilation of his spouse's criminal history, to the extent it exists, and it may not be withheld under section 552.101 on the basis of the common-law privacy interests of his wife. In that instance, the information at issue must be withheld in its entirety from the requestor under section 552.101 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, 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

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Enc. Submitted documents

c: Requestor
(w/o enclosures)