



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2013

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767-1748

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2013-08046

Dear Ms. Winn:

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# 487384.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all the information pertaining to case number 12-24231. You claim the submitted information is excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in pertinent part:

(a) Except as provided by Section 261.203, the 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:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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.

Fam. Code § 261.201(a), (k), (l). Upon review, we find the submitted information was used or developed in an investigation by the sheriff's office of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of 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 disabilities of minority removed for general purposes). Thus, this information is subject to section 261.201(a).

However, the requestor is a parent of the alleged child victim at issue. Furthermore, the requestor is not the individual alleged to have committed the abuse. Therefore, the sheriff's office may not withhold the submitted information from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, before the sheriff's office provides any of this information to the requestor, the sheriff's office must redact any personally identifying information about a child witness unless the requestor is the child witnesses's parent, managing conservator, or other legal representative. *See id.* § 261.201(l)(1). In this instance, the requestor may be a parent, managing conservator, or other legal representative of the child witnesses listed in the information at issue. Thus, we rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child witnesses at issue, then the sheriff's office must withhold their identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child witnesses at issue, then the sheriff's office may not withhold the identifying information we have marked under section 552.101 in conjunction with section 261.201(l)(1). We note the sheriff's office must redact the identity of the person who made the report before the sheriff's office provides any of the remaining information to the requestor. *See id.* § 261.201(l)(3). Therefore, the sheriff's office must withhold the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. In addition, the sheriff's office must redact any information that is otherwise excepted from required disclosure under the Act pursuant to section 261.201(l)(2). *See id.* § 261.201(l)(2). We note some of the remaining information is protected by section 552.101 of the Government Code in conjunction with common-law privacy. You also raise section 552.108(a)(2) of the Government Code for the remaining information. Thus, we will consider the applicability of these exceptions to the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. You raise section 552.108(a)(2) for the remaining information. However, you state this information "pertains to a case that resulted in a deferred prosecution agreement, and the deferred prosecution agreement period has not concluded." Therefore, we understand that, should the defendant fail to adhere to the terms of the agreement, this case could ultimately result in a conviction or deferred adjudication. Because you have provided this office with conflicting representations, we are unable to determine the submitted

information pertains to a closed case that did not result in conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. Therefore, none of the remaining information may be withheld under section 552.108(a)(2) of the Government Code.

We note some of the remaining information is protected by common-law privacy. Section 552.101 of the Government Code also 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. *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) (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. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not a parent, managing conservator, or other legal representative of the child witnesses at issue, then the sheriff's office must withhold their identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child witnesses at issue, then the sheriff's office may not withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code and common-law privacy. As no further exceptions to disclosure are raised for the remaining information, the sheriff's office must release it.²

²We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.201(k), (l)(1). Because such information is confidential with respect to the general public, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 487384

Enc. Submitted documents

c: Requestor
(w/o enclosures)

NOV 12 2013

At 8:46am M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GV-13-000550

| | | |
|---|---|--------------------------|
| DAVID A. ESCAMILLA, TRAVIS COUNTY ATTORNEY Plaintiff, | § | IN THE DISTRICT COURT OF |
| | § | |
| | § | |
| v. | § | 261st JUDICIAL DISTRICT |
| | § | |
| GREG ABBOTT, ATTORNEY GENERAL OF TEXAS Defendant. | § | |
| | § | |
| | § | TRAVIS COUNTY, TEXAS |

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code ch. 552. All matters in controversy between Plaintiff David A. Escamilla, Travis County Attorney (the County Attorney) and Defendant, Greg Abbott, Attorney General of Texas (the Attorney General) have been resolved, and the parties agree to the entry and filing of an agreed final judgment.

Texas Government Code section 552.325(d) requires the Court to allow the requestor of information a reasonable period of time to intervene after notice of the intent to enter into settlement is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice by certified letter to the requestor, Mr. Doug Johnson, on 10/7/13, providing reasonable notice of this setting (see attached certified mail receipt). The requestor was informed of the parties' agreement that County Attorney may withhold the information at issue in this suit. The requestor was also informed of his right to intervene in the suit to contest the withholding of the information. The requestor has neither informed the parties of his intention to intervene, nor has a motion to intervene been filed.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties in this suit.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The County Attorney and the Attorney General have agreed that, in accordance with the PIA and under the facts presented, the information at issue in this suit is generally excepted from disclosure pursuant to Tex. Gov't Code § 552.108(a)(1) (hereinafter, the Excepted Information);

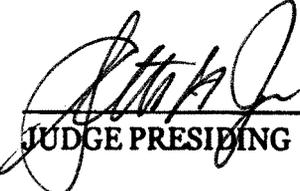
2. With the exception of basic information, which must be released to the requestor pursuant to Tex. Gov't Code § 552.108(c), the County Attorney may withhold the Excepted Information described in Paragraph 1 of this order;

3. All court cost and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

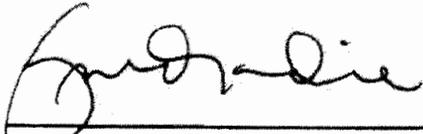
5. This Agreed Final Judgment finally disposes of all claims between the County Attorney and the Attorney General in this cause and is a final judgment.

SIGNED this 12th day of November, 2013.



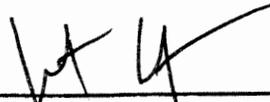
JUDGE PRESIDING

AGREED:



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