



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2013

Ms. M. Ann Montgomery-Moran
Assistant County & District Attorney
County of Ellis
109 South Jackson
Waxahachie, Texas 75165

OR2013-09629

Dear Ms. Montgomery-Moran:

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# 489832

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to a named individual, including information pertaining to a specified investigation. You indicate the sheriff's office has released some of the requested information but claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions 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 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 satisfied. *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.

After reviewing the request and the responsive information, we find the requestor is seeking, in part, specific information involving herself and the named individual. The requestor also asks for information pertaining to a specified investigation. Accordingly, these portions of the request do not implicate the named individual's right to privacy, and the sheriff's office may not withhold the information involving the requestor and the named individual or the specified investigation under section 552.101 on the basis of the named individual's privacy interests as a compilation of his criminal history. Nevertheless, to the extent the sheriff's office maintains other, unspecified law enforcement records depicting the named individual as a suspect, arrestee, 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.

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 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.

...

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). You assert ECSO report number 07-01012 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find this information is within the scope of section 261.201(a). However, the requestor is a parent of the child victim and this individual is not alleged to have committed the suspected abuse. Thus, the sheriff’s office may not withhold this information from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Nevertheless, section 261.201(l)(2) provides any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we must address your other arguments to withhold this report under the Act, as well as the remaining information at issue.

You assert portions of ECSO report number 07-01012 and ECSO Book In No. 5550-04 are excepted from disclosure under section 552.108(a)(2) of the Government Code, which 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 the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the information you have marked under section 552.108(a)(2) in the reports at issue pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree the sheriff’s office may withhold the information you have marked in ECSO report number 07-01012 and ECSO Book In No. 5550-04 under section 552.108(a)(2) of the Government Code.

You indicate some of the remaining information in ECSO report number 07-01012 is confidential under common-law and constitutional privacy. Common-law privacy is subject to the two-part test noted above. *See Indus. Found.*, 540 S.W.2d at 685. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. The requestor has a right of access to her child’s private information pursuant to section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a) (“[a] person or a person’s authorized representative has 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 public disclosure by

laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, we find none of the remaining information in ECSO report number 07-01012 is highly intimate or embarrassing. Therefore, none of the remaining information in this report is confidential under common-law privacy and the sheriff's office may not withhold it from release under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy. The information must concern the "most intimate aspects of human affairs." *Id.* at 5; *see Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). As noted above, the requestor has a right of access to her child's private information pursuant to section 552.023 of the Government Code. In addition, after review of the remaining information at issue, we find it does not contain information that is confidential under constitutional privacy. Therefore, the sheriff's office may not withhold it under section 552.101 on that ground.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We agree the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.¹

¹We note section 552.130(c) allows a governmental body to redact the information described in section 552.130(a)(1) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c).

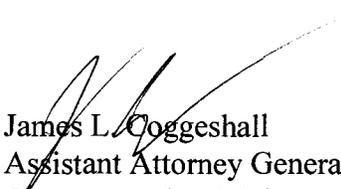
You assert some of the remaining information is excepted under section 552.147(a) of the Government Code, which provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). The sheriff’s office may withhold the social security number you have marked under section 552.147.²

To conclude, the sheriff’s office must withhold (1) any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the information you have marked under section 552.130 of the Government Code. The sheriff’s office may withhold (1) the information you have marked in ECSO report number 07-01012 and ECSO Book In No. 5550-04 under section 552.108(a)(2) of the Government Code and (2) the information you have marked under section 552.147 of the Government Code. The sheriff’s office must release the remaining information.³

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

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²We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

³Because the requestor has a special right of access to some of the information being released, the sheriff’s office must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 489832

Enc. Submitted documents

c: Requestor
(w/o enclosures)