



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2013

Mr. Daniel Plake
Assistant County Attorney
Open Records Division
Montgomery County
207 West Phillips Street, Suite 100
Conroe, Texas 77301

OR2013-12768

Dear Mr. Plake:

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# 494194 (Montgomery County ORR# 2013-2526).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to two named individuals, including cause number 13-287190 and a specified arrest. You claim 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.

Initially, we note you have not submitted information relating to cause number 13-287190. We assume, to the extent this information existed on the date the sheriff's office received the request, we assume the sheriff's office has released it. If the sheriff's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 doctrine of common-law privacy, which protects information (1) containing 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. Upon review, we find the present request, in part, requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals. Accordingly, we find the request implicates the named individuals' rights to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records, other than information pertaining to the specified arrest, depicting either of the named individuals 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. We note, however, you have submitted a report which does not list the named individuals as suspects, arrestees, or criminal defendants. Additionally, the submitted information includes records of the specified arrest. This information does not implicate the privacy interests of the named individuals. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy as a criminal history compilation. Accordingly, we will address your remaining argument against disclosure of this information.¹

Section 552.101 of the Government Code also encompasses information other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See Fam. Code* § 51.02(2). Section 58.007 provides, in pertinent part, as follows:

(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;

¹As our ruling is dispositive for this information, we need not address your remaining argument against disclosure of this information.

(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.

Id. § 58.007(c). Upon review, we conclude the information we have marked consists of law enforcement records involving juvenile delinquent conduct occurring after September 1, 1997 and is, therefore, subject to section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator’s or driver’s license or permit or motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release.² Gov’t Code § 552.130(a)(1), (2). Upon review, we find the sheriff’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff’s office maintains law enforcement records, other than information pertaining to the specified incidents, depicting either of the named individuals 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. The sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and section 552.130 of the Government Code. The remaining information must be released.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.

²The 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 No. 481 (1987), 480 (1987), 470 (1987).

³Section 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. *See* Gov’t Code § 552.147(b).

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 494194

Enc. Submitted documents

c: Requestor
(w/o enclosures)