



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2013

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

OR2013-17803

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# 501956.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all information involving the requestor, her family, a named individual, and a specified address. 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 submitted representative sample of information.<sup>1</sup>

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

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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.

You state the present request requires the sheriff's office to compile unspecified law enforcement records concerning the named individual and thus implicates this individual's right to privacy. However, after reviewing the request and the submitted information, we find the requestor is, in part, seeking domestic violence reports involving the requestor and the named individual. Accordingly, this portion of the request does not implicate the named individual's right to privacy, and the information at issue may not be withheld under section 552.101 on this basis. Furthermore, the remaining information does not list the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of an individual's criminal history and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Section 261.201 of the Family Code 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department 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 contend report number 13-14557 and its related call slip are confidential under section 261.201(a). Upon review, we agree the information at issue was used or developed in an investigation of alleged or suspected child neglect under chapter 261 of the Family Code, so as to be generally confidential under section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(4) (defining “neglect” for purposes of chapter 261 of the Family Code). In this instance, the requestor is a parent of the child victims of the alleged or suspected neglect; however, it is unclear if the requestor is an individual accused of committing the suspected neglect. Pursuant to section 261.201(k), the information at issue may not be withheld from the requestor on the basis of section 261.201(a) if she is a parent of the children and is not alleged to have committed the alleged or suspected neglect. *See id.* § 261.201(k). As we are unable to determine whether the requestor is alleged to have committed the alleged or suspected neglect, we must rule conditionally. Thus, if the requestor is alleged to have committed the alleged or suspected neglect, the sheriff’s office must withhold report number 13-14557 and its related document in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. But if the requestor is not alleged to have committed the alleged or suspected neglect, then report number 13-14557 and its related document may not be withheld from the requestor under section 552.101 on the basis of section 261.201(a). *See id.* Section 261.201(l)(2) also provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, in the event report number 13-14557 and its related document may not be withheld from the requestor under section 261.201(a), we will address your claim under section 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 12-20646, 13-14524 and the related documents “have been referred to the Justice Court but are within the statute of limitations and may still be prosecuted.” You

also state report numbers 13-15153, 13-16201, 13-20162 and the related documents pertain to active criminal investigations by the sheriff's office or the Fort Bend County District Attorney's Office. Based on your representations, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) of the Government Code is applicable to report numbers 12-20646, 13-14524, 13-15153, 13-16201, 13-20162, and the related documents.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 03-17804, 12-18308, 12-20653, 13-14557, 13-16278, 13-16327 and the related documents pertain to concluded cases that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) of the Government Code is applicable to report numbers 03-17804, 12-18308, 12-20653, 13-14557, 13-16278, 13-16327, and the related documents.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, the location of the offense. *See* ORD 127. Thus, with the exception of the basic information pertaining to each report, which must be released, the sheriff's office may withhold report numbers 12-20646, 13-14524, 13-15153, 13-16201, 13-20162 and the related documents under section 552.108(a)(1) of the Government Code and may withhold report numbers 03-17804, 12-18308, 12-20653, 13-14557, 13-16278, 13-16327, and the related documents under section 552.108(a)(2) of the Government Code.<sup>2</sup>

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. Common-law privacy also protects the types of information considered intimate and embarrassing by the Texas Supreme Court as delineated in *Industrial Foundation*. *Indus. Found.* 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we agree some of the remaining information satisfies the standard articulated

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

by the Texas Supreme Court in *Industrial Foundation*. However, this information pertains to the requestor. Pursuant to section 552.023 of the Government Code, the requestor has a right of access to information that would otherwise be withheld to protect her privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning self). Therefore, private information relating to the requestor may not be withheld from her under section 552.101 in conjunction with common-law privacy. Further, we find the sheriff's office has failed to demonstrate how any of the remaining information pertaining to an individual other than the requestor is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

We note some of the basic information in report number 13-16278 may be subject to section 552.1175 of the Government Code.<sup>3</sup> Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Act of May 26, 2013, 83rd Leg., R.S., H.B. 1632, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." Gov't Code § 552.1175(a)(1). We note the basic information contains the home address of an individual who is listed as a police officer. We have marked information pertaining to the individual at issue not held in an employment capacity that may be subject to section 552.1175. Accordingly, if the individual whose information we have marked is currently a licensed peace officer and elects to restrict access to the information pertaining to him in accordance with section 552.1175(b), the sheriff's office must withhold the marked information under section 552.1175 of the Government Code. If the individual is not currently licensed or does not elect to restrict access to the information pertaining to him in accordance with section 552.1175(b), the sheriff's office may not withhold the information at issue under section 552.1175 of the Government Code.

In summary, if the requestor is alleged to have committed the alleged or suspected neglect, the sheriff's office must withhold report number 13-14557 and its related document in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is not alleged to have committed the alleged or suspected neglect, then with the exception of basic information, the sheriff's office may withhold report number 13-14557 and its related document under section 552.108(a)(2) of the Government Code. With the exception of the basic information pertaining to each report, which must be released, the sheriff's office may

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold report numbers 12-20646, 13-14524, 13-15153, 13-16201, 13-20162, and the related documents under section 552.108(a)(1) of the Government Code and may withhold report numbers 03-17804, 12-18308, 12-20653, 13-16278, 13-16327, and the related documents under section 552.108(a)(2) of the Government Code. In releasing the basic information in report number 13-16278, the sheriff's office must withhold the home address we have marked under section 552.1175 of the Government Code, if the individual whose information we have marked is currently a licensed peace officer and elects to restrict access to the information pertaining to him in accordance with section 552.1175(b) of the Government Code. The remaining information must be released.<sup>4</sup>

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/bhf

Ref: ID# 501956

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the information being released in this instance includes information that is confidential with respect to the general public. See Gov't Code § 552.023(a), ORD 481 at 4. Therefore, 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.