



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

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

OR2013-18030

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# 502561.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for all records involving the requestor and three specified addresses, including any reports involving the requestor and a named individual and any domestic disturbance reports involving the requestor and a second named individual. You indicate the sheriff's office has released some information to the requestor. 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 information.

Section 552.101 of the Government Code excepts "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 is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. A compilation of

an individual's criminal history record information 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 requestor is seeking, in part, specific domestic violence incident reports involving himself and the second named individual. Accordingly, this portion of the request does not implicate the second named individual's right to privacy, and the submitted domestic violence incident reports involving the requestor and the named individual may not be withheld under section 552.101 on the basis of the named individual's privacy interests in a compilation of his criminal history. Furthermore, you have submitted information that does not list the first named individual as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of the first named individual's criminal history, and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we will address your arguments against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses information other statutes make confidential, such as section 261.201, which provides in relevant 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 [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.

Fam. Code § 261.201(a), (k). We find report numbers 10-1783, 11-1570, 11-8886, 12-8042, 12-8061, and 12-2119 were used or developed in investigations of alleged child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Accordingly, we find the information at issue falls within the scope of section 261.201(a) of the Family Code. We note that although the requestor is a parent of the child victims, the requestor is alleged to have committed the suspected abuse or neglect. Thus, the information at issue may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). We therefore conclude the sheriff’s office must withhold report numbers 10-1783, 11-1570, 11-8886, 12-8042, 12-8061, and 12-2119 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1996) (predecessor statute).

You assert report numbers 07-26025 and 09-5913 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state report numbers 07-26025 and 09-5913 pertain to concluded criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to report numbers 07-26025 and 09-5913.

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 Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of basic information, the sheriff’s office may withhold report numbers 07-26025 and 09-5913 under section 552.108(a)(2) of the Government Code.¹

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

In summary, the sheriff's office must withhold report numbers 10-1783, 11-1570, 11-8886, 12-8042, 12-8061, and 12-2119 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, which must be released, the sheriff's office may withhold report numbers 07-26025 and 09-5913 under section 552.108(a)(2) of the Government 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.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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 502561

Enc. Submitted documents

c: Requestor
(w/o enclosures)