



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 11, 2014

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2014-10049

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# 525526.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information regarding the requestor, the requestor's spouse, the requestor's two children, the requestor's former spouse, a named individual, two specified addresses, and a specified incident. You state the sheriff's office will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 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

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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.

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. This office has found 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. United States 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the sheriff's office to compile the criminal histories of the individuals specified in the request and implicates those individuals' right to privacy. However, upon review of the request and the submitted information, we find the requestor is, in part, seeking domestic violence reports involving himself and his former spouse. Thus, this portion of the request does not implicate that individual's right to privacy, and the domestic violence reports involving the requestor and his former spouse may not be withheld under section 552.101 of the Government Code on the basis of that individual's privacy interests as a compilation of her criminal history. Additionally, we note the requestor has a right of access to his own criminal history information, as well as his minor children's information, pursuant to section 552.023 of the Government Code. Accordingly, the sheriff's office may not withhold any of the requested information as a criminal history compilation of the requestor or of the requestor's children under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the sheriff's office maintains unspecified law enforcement records listing either his former spouse or the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information that does not list any of the individuals at issue as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of these individuals' criminal histories, and the sheriff's office may not withhold it under section 552.101 of the Government Code on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

The doctrine of common-law privacy also excepts the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation. Indus. Found.*, 540 S.W.2d at 683. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault

or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You claim report number 11-15388 is excepted in its entirety pursuant to section 552.101 in conjunction with common-law privacy. However, we note the requestor's minor child is the individual whose privacy interests are at issue in that report. As noted above, the requestor has a right of access to his minor child's information pursuant to section 552.023. *See* Gov't Code § 552.023(a), ORD 481 at 4. Accordingly, the sheriff's office may not withhold report number 11-15388 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 section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads 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;

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by

Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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 at the time of the reported conduct. *See id.* § 51.02(2). Report numbers 12-32337, 11-19753, 11-15388, 11-15326, and 10-30852 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Thus, this information is generally confidential under section 58.007(c). In this instance, the requestor is a parent of one of the juvenile offenders at issue. Therefore, this requestor has a right to inspect information concerning his child under section 58.007(e), and it may not be withheld from him under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent's child must be redacted. *See id.* § 58.007(j)(1). Therefore, the sheriff's office must withhold the information we have marked in report number 10-30852 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address whether the information at issue is otherwise excepted under the Act.

Section 552.101 of the Government Code also encompasses information made confidential by 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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.

*Id.* § 261.201(a), (k), (l). You claim report numbers 11-19753, 10-25681, 10-4221, 09-1678, 09-519, 08-29752, 08-26190, and 08-20643 consist of information used or developed in an investigation of alleged or suspected abuse or neglect under chapter 261 of the Family Code. However, upon review, we find the sheriff's office failed to demonstrate the information in

report numbers 10-25681, 09-1768, 09-519, 08-29752, and 08-26190 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the sheriff’s office may not withhold report numbers 10-25681, 09-1768, 09-519, 08-29752, and 08-26190 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We find the information in report numbers 11-19753, 10-4221, and 08-20643 consists of information used or developed in an investigation of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, this information falls within the scope of section 261.201 of the Family Code. In this instance, the requestor is the parent of the child victim listed in report numbers 11-19753, 10-4221, and 08-20643. However, we note the requestor is alleged to have committed the suspected abuse or neglect in report numbers 10-4221 and 08-20643. Thus, the requestor does not have a right of access to report numbers 10-4221 and 08-20643 under section 261.201(k). *See id.* § 261.201(k). Therefore, we conclude the sheriff’s office must withhold report numbers 10-4221 and 08-20643 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

The requestor is not alleged to have committed the abuse or neglect in report number 11-19753. Thus, pursuant to section 261.201(k), the sheriff’s office may not withhold report number 11-19753 from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* However, section 261.201(l)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(l)(2). Accordingly, we will consider whether report number 11-19753 is otherwise excepted under the Act.

Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked under chapter 411 constitutes confidential CHRI. Therefore, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. However, we find no portion of the remaining information consists of confidential CHRI for the purposes of chapter 411, and the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by article 63.017 of the Code of Criminal Procedure, which provides the following:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. You contend some of the remaining information is confidential under article 63.017 of the Code of Criminal Procedure. For purposes of article 63.017, "clearinghouse" is defined as the missing children and missing persons information clearinghouse, which is established within the Texas Department of Public Safety. *Id.* arts. 63.001(7), .002(a). The information at issue consists of incident reports and the related call slips that were created by the sheriff's office. The incident reports and call slips are not clearinghouse records for purposes of article 63.017. Therefore, the sheriff's office may not withhold the information at issue under section 552.101 in conjunction with that article. *See id.* arts. 63.001(7), .002(a).

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 the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state report numbers 12-32337, 12-4516, 11-19753, 11-16458, 11-15388, 11-15326, 11-12823, 10-25681, 09-1768, 09-519, 08-29752, and 08-26190 pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold report numbers 12-32337, 12-4516, 11-19753, 11-16458, 11-15388, 11-15326, 11-12823, 10-25681, 09-1768, 09-519, 08-29752, and 08-26190 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1). Accordingly, the sheriff's office must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records listing either the requestor's former spouse or the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked in report number 10-30852 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The sheriff's office must withhold report numbers 10-4221 and 08-20643 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 and federal law. With the exception of basic information, the sheriff's office may withhold report numbers 12-32337, 12-4516, 11-19753, 11-16458, 11-15388, 11-15326, 11-12823, 10-25681, 09-1768, 09-519, 08-29752, and 08-26190 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.<sup>3</sup>

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<sup>2</sup>We note the basic information contains the arrestee's social security number. *See* ORD 127 at 4. 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. Gov't Code § 552.147(b).

<sup>3</sup>We note the requestor has a special right of access to some of the information being released. *See* Fam. Code §§ 58.007(e), 261.201(k); Gov't Code § 552.023; ORD 481 at 4. Because such information may be 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.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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/tch

Ref: ID# 525526

Enc. Submitted documents

c: Requestor  
(w/o enclosures)