



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2014

Mr. C.E. Cox
Chief Deputy
Bell County Sheriff's Department
104 South Main Street
Belton, Texas 76513

OR2014-13257

Dear Mr. Cox:

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# 531338.

The Bell County Sheriff's Department (the "sheriff's department") received a request for all dates of incarceration of a specified individual. You claim the responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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. 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 seeks any and all dates of incarceration of a specified individual. This request requires the sheriff's department to compile the named individual's criminal history and implicates the individual's right to privacy. Therefore, to the extent the sheriff's department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff's department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the individual's criminal history.

We note, however, the requestor is an employee of the Texas Workforce Commission (the "TWC") who asserts she has a right of access to the information at issue. Section 301.081 of the Labor Code, which governs the release of employment information to the TWC, provides in pertinent part as follows:

- (a) Each employing unit shall keep employment records containing information as prescribed by the [TWC] and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the [TWC] or an authorized representative of the [TWC] at any reasonable time and as often as necessary.
- (b) The [TWC] may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
- (c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the [TWC] considers necessary for the proper administration of this title or as provided by [TWC] rule and consistent with federal law.

Labor Code § 301.081(a)-(c). Thus, the TWC has a right of access to employment records containing information prescribed by the TWC. *See id.* However, upon review, we find the responsive information does not consist of employment records for purposes of section 301.081 of the Labor Code. As such, the requestor has no right of access to the requested information, to the extent it exists, under this provision.

However, as noted above, the requestor is an employee of the TWC. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting

its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

We note common-law privacy is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Thus, pursuant to the intergovernmental transfer doctrine, the sheriff's department has the discretion to release the responsive information that is subject to common-law privacy, to the extent it exists. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the sheriff's department does not waive its interests in withholding this information, to the extent it exists, by exercising its discretion under the intergovernmental transfer doctrine.

In summary, if the sheriff's department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the sheriff's department maintains such records, it may exercise its discretion to release the responsive information to the TWC based on the doctrine of intergovernmental transfer.

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 "JB", with a long horizontal flourish extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 531338

Enc. Submitted documents

c: Requestor
(w/o enclosures)