



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 16, 2016

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, Third Floor  
Richmond, Texas 77469

OR2016-03654

Dear Mr. Grove:

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# 598348.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports pertaining to a named individual and the requestor at a specified address during a specified time period. You state you will release some information. 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. 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 individual other than the requestor. We find this part of the request generally implicates the other named individual's right to privacy. However, we note the requestor also asks for information held by the sheriff's office concerning herself. This part of the request seeks specified records involving the requestor. Further, the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, information relating to the requestor may not be withheld from her as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the reports involving the requestor, to the extent the sheriff's office maintains law enforcement records depicting the other named individual 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 reports that either involve the requestor or do not list the other named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the other named individual. Thus, this information may not be withheld under section 552.101 in conjunction with common-law privacy as a criminal history compilation.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 Juvenile Justice Department, 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). Report numbers 13-9628, 14-20412, 14-20525, 14-31259, and 15-32981 consist of reports of alleged or suspected child abuse or neglect made to the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as 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, we find this information is subject to chapter 261 of the Family Code. In report numbers 13-9628, 14-20412, 14-20525, 14-31259, and 15-32981 the requestor is a parent of the child victims listed in the information at issue. However, we note the requestor is alleged to have committed the suspected abuse or neglect in report numbers 13-9628, 14-20412, 14-20525, and 14-31259; thus the requestor does not have a right of access to these reports under section 261.201(k). *See id.* § 261.201(k). Therefore, we conclude report numbers 13-9628, 14-20412, 14-20525, and 14-31259 are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, the requestor is not the individual alleged to have committed the abuse or neglect in report number 15-32981. Thus, the sheriff's office may not withhold report number 15-32981 from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

*Id.* § 261.201(1)(2). Therefore, we will consider your argument under section 552.108 of the Government Code for report number 15-32981.

You argue report number 14-5686 is confidential in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy.

In report number 14-5686 the requestor knows both the identity of the individual involved as well as the nature of the incident in the submitted information. Therefore, withholding only the individual's identity or certain details of this incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold report number 14-5686 in its entirety from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

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 09-3207, 09-10330, 13-8624, 14-9514, and 15-32981 relate to closed cases that did not result in convictions or deferred adjudications. Based on your representation and our review, 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, a detailed description of the offense. *See id.* 127 at 3-4. Thus,

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

with the exception of the basic information, the sheriff's office may withhold report numbers 09-3207, 09-10330, 13-8624, 14-9514, and 15-32981 under section 552.108(a)(2) of the Government Code.<sup>3</sup>

You argue the basic information related to report number 13-8624 is protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. As previously discussed, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* ORD 455. Upon review, we find a portion of the basic information in report number 13-8624, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing basic information, the sheriff's office must withhold the information we marked under section 552.101 in conjunction with common-law privacy.<sup>4</sup> However, you have not demonstrated any portion of the remaining basic information is highly intimate or embarrassing and of no legitimate public concern. Therefore, no portion of the remaining basic information may be withheld under section 552.101 in conjunction with common-law privacy.

You also raise section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for the remaining basic information in report number 13-8624. Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center, which is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F 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 not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter E-1 or subchapter F.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Upon review, we find the sheriff's office has failed to demonstrate any of the basic information in report number 13-8624 contains CHRI for purposes of chapter 411. Accordingly, none of the basic information at issue is confidential under chapter 411, and the sheriff's office may not withhold any of this information under section 552.101 of the Government Code on that ground.

In summary, with the exception of the reports involving the requestor, to the extent the sheriff's office maintains law enforcement records depicting any of the other named individual 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 report numbers 13-9628, 14-20412, 14-20525, and 14-31259 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold report number 14-5686 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, which must be released, the sheriff's office may withhold report numbers 09-3207, 09-10330, 13-8624, 14-9514, and 15-32981 under section 552.108(a)(2) of the Government Code. In releasing basic information pertaining to report number 13-8624, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/dls

Ref: ID# 598348

Enc. Submitted documents

c: Requestor  
(w/o enclosures)