



February 23, 2015

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

OR2015-03545

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# 555167.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all records involving a specified address and three named individuals during a specified time period. 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right to 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 met. *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.

You claim the instant request requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals and implicates these individuals' rights to privacy. Upon review, we find this request requires the city to compile the named individuals' criminal histories and implicates the named individuals' rights to privacy. Thus, to the extent the sheriff's office maintains law enforcement records listing any of the named individuals 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, we note you have submitted information that does not list any of the named individuals as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the individuals' criminal histories, and the sheriff's office may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the individuals' criminal histories. Accordingly, we will address your remaining arguments against disclosure for this information.

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(a) provides 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.

Fam. Code § 261.201(a). Upon review, we find the portions of the submitted information consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of Fam. Code); *see also id.* § 101.003(a) (defining "child" for purposes of section 261.201 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). As you do not indicate the sheriff's office has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Therefore, we conclude the information we have marked is confidential under section 261.201(a). Accordingly, the sheriff's office must withhold the information we have

marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> However, we find you have failed to demonstrate how any of the remaining information pertains to an investigation of suspected or alleged abuse or neglect of a child under chapter 261 the Family Code. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code on that basis.

You raise section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for the remaining information. 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 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 F. Upon review, we find none of the remaining information contains CHRI for purposes of chapter 411. Accordingly, none of the remaining information 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.

You claim the remaining information is subject to common-law privacy. As previously discussed, section 552.101 of the Government Code 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.*, 540 S.W.2d at 685. 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. 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 find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff’s office must withhold the information we have marked

---

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

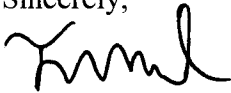
under section 552.101 in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the sheriff's office maintains law enforcement records listing any of the named individuals 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 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 information we have marked under section 552.101 in conjunction with common-law privacy. The sheriff's office must release the remaining information.

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 555167

Enc. Submitted documents

c: Requestor  
(w/o enclosures)