



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2015

Mr. Jorge Luis Ortegon II
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 North Closner Boulevard, Room 303
Edinburg, Texas 78539

OR2015-13092

Dear Mr. Ortegon:

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# 569334 (Your File No. 2015-0033-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for all records involving a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

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

¹Although you also raise section 552.108 of the Government Code for a portion of the information at issue, you provide no arguments explaining how this exception is applicable. Therefore, we assume you no longer assert this exception. See Gov't Code §§ 552.301, .302.

²We 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.

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. 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.

The present request seeks all reports pertaining to a named individual. This request requires the sheriff's office to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records listing 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, we note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the sheriff's office may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in relevant part:

(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.

Fam. Code § 58.007(c). 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.

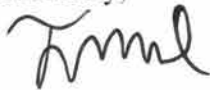
See id. § 51.02(2); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct in need of supervision” for purposes of section 58.007(c)). Upon review, we find the information you have marked as Exhibit B involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). It does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. Thus, the sheriff’s office must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, to the extent the sheriff’s office maintains law enforcement records listing 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 in Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 569334

Enc. Submitted documents

c: Requestor
(w/o enclosures)