



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2017

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2017-02322

Dear Ms. Sheely:

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# 648292 (ORR# 13-13-16).

The Travis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to defendants released on personal or pre-trial bond for a specified period of time, including names and related offenses. The sheriff's office states it does not have some of the requested information.¹ The sheriff's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

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

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

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.

protects information that (1) contains highly intimate or embarrassing fact, 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 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. The sheriff's office asserts the submitted information is confidential under common-law privacy as a compilation of criminal history. However, we find the sheriff's office has failed to demonstrate the request for information requires the sheriff's office to compile unspecified law enforcement records concerning any named individual. Therefore, the sheriff's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of any individual's criminal history.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

[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 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 some of the submitted information was used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The sheriff's office does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the sheriff's office must withhold this information, which we have indicated, under section 552.101 of the Government Code in conjunction with section 261.201(a) of

the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 648292

Enc. Submitted documents

c: Requestor
(w/o enclosures)