



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Mr. Roy L. Cordes, Jr.
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2017-06093

Dear Mr. Cordes:

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# 650130.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to a named individual and all information pertaining to a specified case. 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 representative sample of information.¹

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 protects information that (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

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(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. 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 requestor asks, in part, for all information held by the sheriff's office concerning a named individual. This portion of the 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 any unspecified law enforcement information, other than information pertaining to the specified case, depicting the individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. However, the requestor also asks for information pertaining to a specific case. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. In addition, you have submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant. Therefore, this information does not constitute part of a criminal history compilation, and the sheriff's office may not withhold it under section 552.101 on that ground. Accordingly, we will consider your arguments for this information.

Section 552.101 of the Government Code also encompasses information made confidential by section 261.201 of the Family Code, which provides, in relevant part:

(a) [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 police reports 02-16161 and 03-14323 were used or developed in investigations conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *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 of Family Code). We have no indication the sheriff’s office has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, police reports 02-16161 and 03-14323 are confidential under section 261.201 of the Family Code, and the sheriff’s office must withhold them under section 552.101 of the Government Code.²

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state police report 14-6326 relates to a pending criminal investigation. Based upon this representation, we conclude that the release of this report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) is applicable to police report 14-6326.

Section 552.108(a)(2) of the Government Code excepts from disclosure information dealing with the detection, investigation, or prosecution of crime only in relation to an investigation that concluded in a result other than conviction or deferred adjudication. 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The sheriff’s office states police report 15-21985 relates to a concluded case that did not result in a conviction or deferred adjudication. Based on the this representation, we conclude section 552.108(a)(2) is applicable to police report 15-21985.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic

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

information, the sheriff's office may withhold police report 14-6326 from disclosure under section 552.108(a)(1) of the Government Code and police report 15-21985 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the sheriff's office maintains any unspecified law enforcement information depicting the individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold police reports 02-16161 and 03-14323 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold police report 14-6326 under section 552.108(a)(1) of the Government Code and police report 15-21985 under section 552.108(a)(2) of the Government 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 650130

Enc. Submitted documents

c: Requestor
(w/o enclosures)