



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2017

Mr. Jesse M. Blakley, Jr.
Assistant District Attorney
County of Brazoria
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2017-08599

Dear Mr. Blakley:

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# 654336 (ORR# 17-0144).

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor and a specified address, and a named individual and a specified address, during a specific date range. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims 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. 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. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Further, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The sheriff's office seeks to withhold the submitted information as a criminal history compilation. However, we note the submitted information does not list the named individual as a suspect, arrestee, or criminal defendant. Further, the requestor has a special right of access to his own information that would ordinarily be withheld to protect his privacy interests. *See* Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the sheriff's office may not withhold any of the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

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

Fam. Code § 261.201(a), (k). The sheriff's office asserts some of the submitted information consists of records pertaining to allegations of abuse or neglect of a child that are subject to chapter 261 of the Family Code. Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code). Accordingly, we find the information we have marked is subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victim at issue, but the requestor is alleged to have committed the alleged abuse. Thus, the requestor does not have a right of access to the submitted information under section 261.201(k). *Id.* § 261.201(k). Therefore, 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(k) of the Family Code.¹ However, we find none of the remaining information is confidential under section 261.201 of the Family Code and thus, the sheriff's office may not withhold any of it under section 552.101 of the Government Code on that basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff's office states the remaining information pertains to investigations that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable.

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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note, in Open Records Decision No. 649 (1996), this office concluded information contained in a computer-assisted-dispatch ("CAD") report is substantially the same as basic information. *See* ORD 649 at 3; *see also*

¹As our ruling is dispositive, we need not address the sheriff's office's remaining argument against disclosure of this information.

Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Thus, with the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2).

In summary, 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(k) of the Family Code. With the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2). 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 654336

Enc. Submitted documents

c: Requestor
(w/o enclosures)