



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2017-15269

Dear Ms. Lentz:

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# 665327.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all records for three named individuals and the requestor's client. You state the sheriff's office will redact dates of birth pursuant to Open Records Letter No. 2016-21706 (2016).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.136, 552.147, and 552.152 of the Government Code. We have considered the exceptions you claim 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

¹Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold private citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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.

Code § 552.101. This section 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. 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 present request, in part, requires the sheriff's office to compile unspecified law enforcement records concerning three named individuals. We find this request for unspecified law enforcement records implicates the named individuals right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the named individuals are not depicted as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the individuals and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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). Upon review, we find incident report numbers 97-05-03158 and 97-10-03933J involve a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997. It does not appear that any of the exceptions to confidentiality under section 58.007 of the Family Code apply to this information. Thus, incident report numbers 97-05-03158 and 97-10-03933J are confidential under section 58.007(c) of the Family Code, and the department must withhold them under section 552.101 of the Government Code.³

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in 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.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state incident report number C00-02-1454 pertain to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to incident report number C00-02-1454.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 or social security numbers of individuals other than the arrestee. *See id.* At 3-4. Accordingly, with the exception of basic information, which must be released, the

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

sheriff's office may withhold incident report number C00-02-1454 under section 552.108(a)(2) of the Government Code.⁴

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The sheriff's office asserts, and we agree, the submitted video recordings contains motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. In this instance, the sheriff's office states it does not possess the technological capability to redact information from video files. Thus, the sheriff's office must withhold the motor vehicle record information you marked and the submitted video recordings in their entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Accordingly, the sheriff's office may withhold the social security numbers you marked under section 552.147 of the Government Code.

Section 552.152 of the Government Code provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. The sheriff's office represents the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officer within the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officer you marked under section 552.152 of the Government Code.

In summary, to the extent the sheriff's office maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold incident report numbers 97-05-03158 and 97-10-03933J under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold incident report

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

number C00-02-1454 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the motor vehicle record information you marked and the submitted video recordings in their entirety under section 552.130 of the Government Code. The sheriff's office may withhold the social security numbers you marked under section 552.147 of the Government Code. The sheriff's office must withhold the identifying information of the undercover officer you marked under section 552.152 of the Government Code. The remaining information must be released.⁵

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,



Emily Buchanan
Attorney
Open Records Division

EB/eb

Ref: ID# 665327

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.