



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 25, 2019

Mr. Matthew L. Grove  
Assistant County Attorneys  
Fort Bend County  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2019-05225

Dear Mr. Grove:

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# 751731.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all calls for service and incident reports involving the first requestor's client or occurring at a specified location and six specified incident reports. The sheriff's office received another request from a different requestor, representing the same client, for all calls or incident reports related to the second requestor's client, another named individual, and a specified address. You state you have released some information to the first requestor. 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.<sup>1</sup>

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. This section encompasses the doctrine of common-law privacy, which

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<sup>1</sup>We 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 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 (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) (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 does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

Upon review, we find the second request, in part, requires the sheriff's office to compile unspecified law enforcement records concerning the named individual other than the requestor's client. We find this part of the request implicates this named individual's right to privacy. However, we note both requestors seek information involving their client. The requestors have a special right of access to their client's information that would ordinarily be withheld to protect her privacy interests. *See* Gov't Code § 552.023(a) (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). Thus, the portions of the requests seeking records involving the requestors' client do not implicate the other named individual's right to privacy. Therefore, information pertaining to the requestors' client may not be withheld from either requestor as a compilation of criminal history.

We further note the first requestor also asks for information pertaining to specific incidents. Because the first requestor specifically asks for this information, it is not part of a compilation of the named individual's criminal history and may not be withheld from the first requestor on that basis. Thus, with the exception of law enforcement records involving the requestors' client, to the extent the sheriff's office maintains unspecified law enforcement records depicting the other named individual 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. We further note you have submitted law enforcement records that do 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 in conjunction with common-law privacy on that basis. Accordingly, we will address your arguments against disclosure of this information.

Next, we note the information related to report number 18-40451 contains court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the sheriff’s office may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. However, because section 552.101 of the Government Code can make information confidential under the Act, we will consider your argument under this section for the information at issue. We will also address your arguments for the information not subject to section 552.022 of the Government Code.

Section 552.101 of the Government Code also encompasses 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.

...

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse or neglect by the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find the information at issue is within the scope of section 261.201 of the Family Code. However, we note the requestors may represent a parent, guardian, or managing conservator of the child victims listed in the information at issue, and the requestors' client is not alleged to have committed the abuse or neglect. As such, these requestors may have a right of access to this information pursuant to section 261.201(k). As we are unable to determine whether the requestors represent a parent, guardian, or managing conservator of the child victims, we rule conditionally. If the requestors' client is not a parent, guardian, or managing conservator of the child victims listed in the information at issue, then the sheriff's office must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Conversely, if the requestors' client is a parent, guardian, or managing conservator of the child victims, then the sheriff's office may not withhold the information we have marked under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You raise sections 552.101 and 552.108 of the Government Code as exceptions to disclosure for the information at issue. Therefore, to the extent the requestors' client is a parent, guardian, or managing conservator of the child victims, we will address the applicability of these sections to the information at issue.

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 report number 18-40451 relates to a pending criminal prosecution. Based upon this representation, we conclude the release of report numbers 18-40451 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). Thus, section 552.108(a)(1) is applicable to report number 18-40451.

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 the information we have marked and report numbers 16-36841, 17-15199, 18-11775, and 18-40641 pertain to criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to the information we have marked and report numbers 16-36841, 17-15199, 18-11775, and 18-40641.

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 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). We note basic information includes, among other items, a detailed description of the offense and the identity of the reporting party. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information and the information subject to section 552.022(a)(17) of the Government Code, the sheriff's office may withhold report number 18-40451 under section 552.108(a)(1) of the Government Code.<sup>2</sup> Furthermore, if the requestors' client is a parent, guardian, or managing conservator of the child victims at issue, then, with the exception of basic information, the sheriff's office may withhold the information we have marked under section 552.108(a)(2) of the Government Code.<sup>3</sup> Finally, with the exception of basic information, the sheriff's office may withhold report numbers

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

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

16-36841, 17-15199, 18-11775, and 18-40641 under section 552.108(a)(2) of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988)*. However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *Open Records Decision No. 549 at 5 (1990)*. We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See ORD 208 at 1-2*.

You state portions of the basic information in report number 18-11775 identify a complainant who reported violations of law to the sheriff's office. Based upon your representations and our review, we conclude you have demonstrated the applicability of the common-law informer's privilege to some of the information at issue, which we have marked. Therefore, the sheriff's office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.<sup>5</sup> However, we find you have not demonstrated the remaining basic information at issue identifies an individual who reported a criminal violation to the sheriff's office for purposes of the informer's privilege. Accordingly, the sheriff's office may not withhold any of the remaining basic information in report number 18-11775 under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means

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

<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

“information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We understand you to assert section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for the remaining information. Upon review, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the sheriff’s office may not withhold any portion of the remaining information under section 552.101 of the Government Code on this basis.

In summary, with the exception of law enforcement records involving the requestors’ client, to the extent the sheriff’s office maintains unspecified law enforcement records depicting the other named individual 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. If the requestors’ client is not a parent, guardian, or managing conservator of the child victims listed in the information at issue, then the sheriff’s office must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestors’ client is a parent, guardian, or managing conservator of the child victims at issue, then, with the exception of basic information, which must be released, the sheriff’s office may withhold the information we have marked under section 552.108(a)(2) of the Government Code. With the exception of basic information and the information subject to section 552.022(a)(17) of the Government Code, which must be released, the sheriff’s office may withhold report number 18-40451 under section 552.108(a)(1) of the Government Code. With the exception of basic information, which must generally be released, the sheriff’s office may withhold report numbers 16-36841, 17-15199, 18-11775, and 18-40641 under section 552.108(a)(2) of the Government Code. In releasing the basic information related to report number 18-11775, the sheriff’s office may withhold the information we have marked under section 552.101 of the Government Code in conjunction

with the common-law informer's privilege. The sheriff's office must release the remaining information to these requestors.<sup>6</sup>

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](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/mo

Ref: ID# 751731

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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<sup>6</sup>We note the requestors have a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the sheriff's office receives another request for the same information from a different requestor, the sheriff's office must again seek a decision from this office.