



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-31807

Dear Ms. Lary:

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# 796460.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified address during a specified time period. The sheriff's office states it will release some information to the requestor. 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 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 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

¹ 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.

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. 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.

The sheriff's office contends the present request seeks unspecified law enforcement records and such information should be withheld in its entirety as a compilation under common-law privacy. However, we note the request is for information pertaining to a specified address. Thus, we find this request does not require the sheriff's office to compile an individual's criminal history and does not implicate the privacy interests of any individual. Accordingly, the sheriff's office may not withhold the submitted information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

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.

Fam. Code § 261.201(a). We note some of the submitted information relates to an investigation of alleged or suspected child abuse or neglect conducted 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 this information is

subject to 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 regulation exists. Given that assumption, we conclude 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(a) of the Family Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). 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). The sheriff's office states the remaining information pertains to active criminal investigations or prosecutions. Based on the sheriff's office's representations and our review, we conclude release of the information at issue 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 the remaining information.

However, we note 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

We understand you to raise section 552.101 of the Government Code in conjunction with common-law privacy for the basic information. As previously noted, section 552.101 encompasses common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find portions of the basic information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code

² As our ruling is dispositive, we need not address the sheriff's office's remaining arguments against disclosure of this information.

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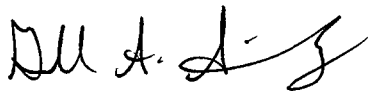
in conjunction with common-law privacy. However, we find the sheriff's office has not demonstrated any of the remaining basic information is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any of the remaining basic information under section 552.101 in conjunction with common-law privacy.

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(a) of the Family Code. With the exception of the basic information, which must be released, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 796460

Enc. Submitted documents

c: Requestor
(w/o enclosures)