



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2007

Ms. M. Ann Montgomery
Assistant Ellis County & District Attorney
Temporary Administration Building
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2007-12765

Dear Ms. Montgomery:

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# 290607.

The Ellis County Sheriff's Office (the "sheriff") received a request for all records pertaining to a specified address from 1998 to July 11, 2007. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a police report, numbered 9708837, from the year 1997. Upon review of the request, we note that the requestor has requested information starting the year 1998. Thus we find that this document, which we have marked, is not responsive to this request. Because this information is not responsive, it need not be released in response to this request, and we do not address your arguments against its release in this ruling.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus.*

Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements 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. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request is for all records pertaining to a specified address. The requestor does not seek a compilation of information for any specific individual. Furthermore, you state that certain identifying information is subject to exception from disclosure. However, you have not demonstrated how any identifying information is subject to exception, nor have you marked any information as confidential. Therefore, the sheriff may not withhold any of the submitted reports under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Gov't Code § 552.108(a)(2). You state that the "requestor seeks information regarding closed cases that did not result in a prosecution, conviction, or deferred adjudication." After reviewing your arguments and the submitted police reports, you have demonstrated that section 552.108(a)(2) is applicable to portions of the police reports that you have marked.

Next, you claim that some of the submitted information is excepted from public disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). Upon review, we agree that you must withhold the Texas-issued motor vehicle record information you have marked, in addition to the information we have marked in the police reports and the call for service sheets, under section 552.130 of the Government Code.

Finally, you claim that the social security number you have highlighted is excepted from disclosure under section 552.147 of the Government Code.¹ This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the sheriff may withhold the social security number you have marked under section 552.147.

In summary, the sheriff may withhold the information you have marked in the police reports under section 552.108(a)(2) of the Government Code. The information pertaining to Texas motor vehicle record information that you have marked, plus the information we have marked, must be withheld under section 552.130 of the Government Code. Lastly, the sheriff may withhold the social security number under section 552.147 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 290607

Enc. Submitted documents

c: Mr. Daniel Garza
P.O. Box 114
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(w/o enclosures)