



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2008

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

OR2008-01739

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# 301462.

The Williamson County Sheriff's Office (the "sheriff") received a request for five categories of information pertaining to two named individuals, as well as documents relating to calls for service to four specified addresses. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.1175, and 552.130 of the Government Code.¹ You also contend that some of the submitted information is not subject to the Act. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your argument that some of the submitted information is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in that decision and

¹We note that the requestor agreed to the redaction of any social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers. Therefore, the sheriff need not release such information and this ruling does not address its public availability.

our review of the information at issue, we determine that password information you have marked in Exhibit B does not constitute public information under section 552.002. Accordingly, this information is not subject to the Act and need not be released to the requestor.

Next, we note that the request at issue seeks five categories of documents. You have not submitted information responsive to the first category of the request, which seeks reports completed by one of the named individuals during a specified time period. To the extent any information responsive to this category existed on the date the sheriff received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you inform us that the sheriff obtained some of the submitted information pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983); *but see* Open Records Decision No. 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent that the sheriff has possession of the submitted information as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of any such information. To the extent that the sheriff does not have possession of the submitted information as an agent of the grand jury, the information is subject to the Act and must be released unless it falls within an exception to public disclosure.

We note that you have redacted information from the submitted documents that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling, in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative

other than ordering that the redacted information be released. See Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302.

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 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. Cf. Gov't Code § 411.082(2)(B).

In this instance, the requestor asks the sheriff for unspecified law enforcement records pertaining to two named individuals, thus implicating the individuals' right to privacy. Thus, to the extent the sheriff maintains records listing either of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold this information under section 552.101 in conjunction with common-law privacy.² We note, however, that you have submitted information related to routine traffic violations as well as information that does not list one of the named individuals as a suspect, arrestee, or criminal defendant. The sheriff may not withhold this information under section 552.101 on the basis of common-law privacy.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits C and D relate to ongoing criminal investigations. Based on your representation, we

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

conclude that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold Exhibits C and D from disclosure based on section 552.108(a)(1). However, we note that a portion of the basic information contained in Exhibit C is the personal information of a peace officer. Accordingly, we will address your arguments under section 552.117 of the Government Code for this information as well as Exhibit E.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Section 552.117 only applies to records that the governmental body is holding in an employment capacity. In this instance, the information you seek to withhold under section 552.117 is contained in law enforcement records. Thus, none of the basic information in Exhibit C, or the information you have marked in Exhibit E, may be withheld under section 552.117 of the Government Code.

However, section 552.1175 of the Government Code may apply. This section provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

....

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). Thus, the sheriff must withhold the personal information we have marked in Exhibits C and E under section 552.1175, if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b). If no election is made, the sheriff may not withhold this information under section 552.1175.

In summary, the sheriff is not required to disclose the password information it has marked in Exhibit B because it is not subject to the Act. Information held by the sheriff as an agent of the grand jury is in the grand jury's constructive possession and is not subject to the Act. To the extent the sheriff maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, the sheriff may withhold Exhibits C and D under section 552.108(a)(1) of the Government Code. The sheriff must withhold the marked portions of the basic information in Exhibit C and the marked information in Exhibit E under section 552.1175 of the Government Code, if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b). If no election is made, the sheriff may not withhold this information under section 552.1175. The remaining submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

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 challenge 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 301462

Enc. Submitted documents

c: Mr. Bryce Benjet
221 West 6th Street, #2000
Austin, Texas 78701
(w/o enclosures)