



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 15, 2008

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

OR2008-04999

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# 308058.

The Ellis County Sheriff's Department (the "sheriff") received a request for all incident reports pertaining to two specified individuals and one specified address. You claim that 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 information.

Initially, we note that you have only submitted information concerning the two named individuals. Therefore, to the extent that responsive information concerning the specified address exists, we assume that it has been released. If such information has not been released, then it must be released 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).

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 exception encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See 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. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. In this instance, the request is for any and all incident or police reports regarding two individuals. This request, in part, requires the sheriff to compile the named individuals' criminal histories. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy.

You have submitted report number 04-18252, which does not list the named individuals as suspects, arrestees, or defendants. You claim the information you have marked in this report is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code provides in 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)(2). Subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. *Id.* A governmental body claiming subsection 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. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the information you have marked in report number 04-18252 pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations, and our review, we find that section 552.108(a)(2) is applicable in this instance.

However, 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 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). Such basic information includes a “detailed description of the offense.” *See id.*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have essentially marked the entire narrative portion of report number 04-18252 as information you seek to withhold under section 552.108. However, the remaining portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released. Accordingly, we determine that the sheriff must release a sufficient portion of the narrative section of report number 04-18252 to encompass a detailed description of the offense, to satisfy the required release of basic information pursuant to *Houston Chronicle*. The sheriff may withhold the remaining information it has marked in report number 04-18252 under section 552.108(a)(2).

In summary, the sheriff must withhold any law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must release a sufficient portion of the narrative section to constitute a detailed description of the offense. The remaining marked information in report number 04-18252 may be withheld under section 552.108(a)(2) of the Government Code.

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

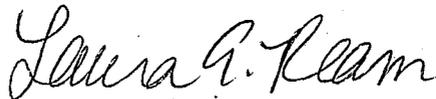
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 308058

Enc. Submitted documents

c: Ms. Amber Hill  
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(w/o enclosures)