



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2008

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

OR2008-11543

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# 319685.

The Williamson County Sheriff's Office (the "sheriff") received a request for all incident reports involving several named individuals, including the requestor, for the past 10 years. 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.

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. Furthermore, 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) (criminal history information does not include driving record information). Also, an individual's current involvement in the criminal justice system, including active warrant information, does not constitute criminal history information for the purposes of section 552.101.

In this instance, the request is for all incident reports involving several named individuals, including the requestor. This request, in part, requires the sheriff to compile the named individuals' criminal histories. We note, however, that section 552.023 of the Government Code gives a person a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, the sheriff may not withhold information under section 552.101 of the Government Code in order to protect the requestor's common-law privacy interests. However, to the extent the sheriff maintains law enforcement records depicting the other named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy.

We note that you have submitted incident reports that do not list the named individuals as suspects, arrestees, or criminal defendants. You assert that these reports, which we have marked, in Exhibit B are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). 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. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the reports at issue in Exhibit B pertain to various criminal investigations by the sheriff where charges were not made or where an arrest was made but the charges were subsequently dismissed. Thus, you state the reports at issue in Exhibit B involve concluded investigations 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 generally applicable to the reports we have marked in Exhibit B.

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). 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). Thus, with the exception of basic information, which must be released, the sheriff may withhold the reports we have marked in Exhibit B under section 552.108(a)(2).

Next, you argue that a portion of the information in Exhibit C is excepted under section 552.101 of the Government Code based on the “special circumstances” aspect of common-law privacy. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on a showing of “special circumstances.” This office considers such “special circumstances” to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face “an imminent threat of physical danger.” Open Records Decision No. 169 at 6. “Special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* After reviewing your arguments and the remaining information, you have failed to demonstrate special circumstances sufficient to justify withholding the information you have marked in Exhibit C from public disclosure on that basis. Thus, none of the information in Exhibit C may be withheld based on “special circumstances.”

We note that the information in Exhibit C contains Texas driver's license numbers. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state.

Gov't Code § 552.130(a)(1). Because the purpose of section 552.130 is to protect the privacy interest of the license holder, the requestor has a right of access under section 552.023 of the Government Code to his own Texas driver's license number.<sup>1</sup> *See id.* § 552.023(a); ORD 481. Accordingly, the sheriff must withhold the Texas driver's license numbers we have marked in Exhibit C under section 552.130 of the Government Code.

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<sup>1</sup>If the sheriff receives another request for this information from a person who would not have a special right of access to the driver's license number, the sheriff should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

In summary, the sheriff must withhold any law enforcement records depicting the named individuals other than the requestor as suspects, arrestees, or criminal defendants under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the sheriff may withhold the reports we have marked in Exhibit B under section 552.108 of the Government Code.<sup>2</sup> The sheriff must withhold the Texas driver's license numbers we have marked in Exhibit C under section 552.130 of the Government Code. The remaining information in Exhibit C must be released to the requestor.<sup>3</sup>

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). If the governmental body does not file suit over 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).

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<sup>2</sup>We note that you have the discretion to release all or part of the information in Exhibit B excepted under section 552.108(a)(2) of the Government Code that is not otherwise confidential by law. Gov't Code § 552.007.

<sup>3</sup>We note the remaining information in Exhibit C contains social security numbers. Section 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. Gov't Code § 552.147. However, the requestor has a right of access to his own social security number. *Id.* § 552.023(a).

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# 319685

Enc. Submitted documents

c: Mr. Michael Abel  
9404 Clearrock Drive  
Austin, Texas 78750  
(w/o enclosures)