



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2009

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

OR2009-05752

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# 342194.

The Ellis County Sheriff's Department (the "department") received a request for the complete file related to case number 08-20567 and sixteen categories of information pertaining to three named individuals. You state that the department will release some of the information to the requestor. You claim that the submitted information is 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.

Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that some of the submitted information appears to be related to an administrative investigation into an officer involved shooting. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you inform this office that the information at issue is related to a current criminal investigation by the Texas Rangers into the officer involved shooting. You also inform this office that the Ellis County District Attorney's office (the "district attorney") will prosecute the case that is being investigated by the Texas Rangers and, therefore, objects to the release of the submitted information. Further, you state that the submitted information also relates to two pending criminal prosecutions. We understand from your representations and the submitted information, that the prosecutions are against individuals who were being apprehended when the officer shooting occurred. Based on the district attorney's representations, we conclude that the release of the information you have marked 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), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the marked information.

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you indicate will be released, the department may withhold the marked information on behalf of the district attorney under section 552.108(a)(1) of the Government Code.¹

¹As our ruling is dispositive with regard to the marked information, we need not address your remaining arguments against the disclosure of the information you have marked under section 552.108.

Next, you claim that a portion of the remaining information, which you have marked, is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to 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). We note that this exception is not applicable to out-of-state driver's license information. Accordingly, except as we have marked for release, the department must withhold the driver's license information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

Section 552.147 of the Government Code states that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.² *Id.* § 552.147. Upon review, we agree the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

Finally, we note that some of the remaining information is subject to section 552.101 of the Government Code, which excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the common-law right of privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is 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 satisfied. *Id.* at 681-82. This office has found that 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. Upon review, we find the criminal history information we have marked is intimate and embarrassing and not of legitimate concern to the public. Therefore, the department must withhold the marked criminal history information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, which you indicate will be released, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. Except as we have marked for release, the department must withhold the driver's license information you have marked, as well as the information we

²Section 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(b).

have marked, under section 552.130 of the Government Code. The department may withhold the marked social security numbers under section 552.147 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 342194

Enc. Submitted documents

c: Requestor
(w/o enclosures)