



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2009

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

OR2009-11315

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# 352221.

The Williamson County Sheriff's Office (the "sheriff") received a request for information pertaining to two report numbers. You claim that some of the submitted information is not subject to the Act. You claim that a portion of the submitted information is excepted from disclosure under section 552.137 of the Government Code. We have considered your submitted arguments and reviewed the submitted information.

Initially, you state that some of the submitted information, which you have marked, has been obtained pursuant to a grand jury subpoena. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *Id.* at 3. Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *Id.* You do not inform us whether the sheriff is holding the information you have marked as an agent of the grand jury. Thus, to the extent the information you have marked is in the custody of the sheriff as an agent of the grand jury, it is not subject to disclosure under the Act. *Id.* at 4. However, to the extent the information

you have marked is not in the custody of the sheriff as an agent of the grand jury, it is subject to disclosure under the Act. In that event, we address your arguments for this information, as well as for the remaining submitted information.

Next, we note that the submitted information contains some information that is subject to section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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 that the information we have marked is intimate and embarrassing and not of legitimate concern to the public. Therefore, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Next, we note that some of the submitted information is subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). We note that section 552.130 of the Government Code protects personal privacy. Thus, the requestor has a right of access to her own driver's license information under section 552.023, and it may not be withheld under section 552.130. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Upon review of the remaining information, the sheriff must withhold the Texas driver's license numbers not pertaining to the requestor, which we have marked in the remaining information under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136. We note that section 552.136 also protects personal privacy, and, as such, the requestor has a right of access under section 552.023 of the Government Code to her own bank account and credit card numbers. However, the sheriff must withhold the insurance policy numbers pertaining to another individual, which we have marked pursuant to section 552.136 of the Government Code.

Next, you seek to withhold the information you have marked in the remaining information under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a general business address because such an address is not that of private individual or “member of the public.” We note that some of the e-mail addresses you have marked are general business e-mail addresses that are not protected under section 552.137. We have marked these e-mail addresses for release. However, the remaining e-mail addresses you have marked, as well as the additional e-mail addresses we have marked in the submitted information must be withheld under section 552.137, unless the owners of these e-mail addresses consent to their release.

Finally, we note that some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, to the extent the information you have marked is in the custody of the sheriff as an agent of the grand jury, it is not subject to disclosure under the Act. The sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy, section 552.130 of the Government Code, and section 552.136 of the Government Code. With the exception of the information we have marked for release, the sheriff must withhold the e-mail addresses you have marked, as well as the additional e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners

of these e-mail addresses consent to their release. The remaining information must be released to the requestor in accordance with copyright law.²

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 Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eeg

Ref: ID# 352221

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that the requestor has a special right of access to her own Texas driver's license number, personal financial information, social security number, bank account and credit card account information, and e-mail address, which are being released in this instance. Gov't Code § 552.023, *see also id.* §§ 552.101, .130, .136, .147. Because such information may be confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office. We also note the remaining information contains social security numbers not belonging to the requestor. 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. *Id.* § 552.147.