



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2009-15189

Dear Ms. Rangel:

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# 359535.

The Fort Bend Sheriff's Office (the "sheriff") received a request for information pertaining to the requestor and a named individual.¹ You state the sheriff has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 section 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

¹You state, and submit documentation showing, that the requestor has excluded the social security numbers and driver's license numbers of third parties from his request. Accordingly, any such information is not responsive to this request. The sheriff need not release non-responsive information and this ruling will not address it.

test must be satisfied. *Id.* at 681-82. 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 records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code § 411.082(2)(B)* (criminal history record information does not include driving record information).

You state the present request requires the sheriff to compile the criminal history of the named individual who is not the requestor and, therefore, implicates this individual's right to privacy. We note, however, this request seeks specific information pertaining to the requestor and a named individual. Such a request does not implicate the privacy interests of an individual. Furthermore, the submitted information does not contain a compilation of any individual's criminal history. Therefore, no portion of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Next, we note that report number 09-5024 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-14812 (2009). In that ruling, we concluded that, with the exception of basic information, the sheriff may withhold the submitted information, including report number 09-5024, under section 552.108(a)(2) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the sheriff may continue to rely on that ruling as a previous determination and withhold or release report number 09-5024 in accordance with Open Records Letter No. 2009-14812. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You claim section 552.108(a)(1) of the Government Code for report numbers 09-15992, 09-20797, and 09-21008. Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report numbers 09-15992, 09-20797, and 09-21008 relate to pending criminal investigations and

prosecutions. Based upon these representations, we conclude that release of the information at issue 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we conclude that section 552.108(a)(1) of the Government Code is generally applicable to report numbers 09-15992, 09-20797, and 09-21008.

You claim section 552.108(a)(2) of the Government Code for report numbers 02-22893, 08-26332, 09-10773, and 09-14004. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 report numbers 02-22893, 08-26332, 09-10773, and 09-14004 relate to concluded cases that did not result in convictions or deferred adjudications. Based on your representations, we conclude section 552.108(a)(2) is applicable to report numbers 02-22893, 08-26332, 09-10773, and 09-14004.

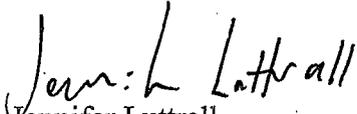
Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you will release, the sheriff may withhold report numbers 09-15992, 09-20797, and 09-21008 under section 552.108(a)(1) of the Government Code and report numbers 02-22893, 08-26332, 09-10773, and 09-14004 under section 552.108(a)(2) of the Government Code.

In summary, the sheriff may continue to rely on Open Records Letter No. 2009-14812 as a previous determination and withhold or release report number 09-5024 in accordance with that ruling. With the exception of basic information, the sheriff may withhold report numbers 09-15992, 09-20797, and 09-21008 under section 552.108(a)(1) of the Government Code and report numbers 02-22893, 08-26332, 09-10773, and 09-14004 under section 552.108(a)(2) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 359535

Enc. Submitted documents

c: Requestor
(w/o enclosures)