



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2009

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

OR2009-17192

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# 363253.

The Ellis County Sheriff's Department and the Ellis County Fire Marshal's Office (collectively, the "county") received a request for all incident reports from a specified address and all information pertaining to two named individuals. 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 552.101 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. 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 established. *See 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in

courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, the common-law right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). Accordingly, the county may not withhold any of the submitted information on the basis of the decedents' common-law right to privacy.

You claim a portion of the submitted information contains medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). The information at issue consists of a police incident report. You seek to withhold this information under the MPA. We note information taken directly from medical records and contained in other documents can be withheld in accordance with the MPA. You have failed to demonstrate, however, and the incident report does not otherwise indicate, any of the information was taken directly from records created by or under the supervision of a physician. Therefore, none of the submitted information may be withheld on the basis of the MPA.

Section 552.101 also encompasses the confidentiality provisions of Family Code section 58.007. Section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). A portion of the submitted information pertains to a juvenile runaway. Thus, we find that this information involves a juvenile engaged in conduct indicating a need for supervision. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). It does not appear that any of the exceptions in section 58.007 apply. Therefore, we find the information we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, none of the remaining reports pertain to a juvenile as a suspect, arrestee, or offender. Thus, we find you have failed to demonstrate how the remaining reports involve juvenile delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. *See id.* § 51.03(a), (b). Thus, none of the remaining reports may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We now address your claim under section 552.108 of the Government Code. Section 552.108 provides in relevant 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:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(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 [required public disclosure] if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). You state portions of the information supplied by the Ellis County Fire Marshal are excepted from disclosure under sections 552.108(b)(1) and 552.108(b)(2). Generally speaking, subsection 552.108(b)(1) is mutually exclusive of subsection 552.108(b)(2). Subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, subsection 552.108(b)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You generally state that the information supplied by the Ellis County Fire Marshal is excepted from disclosure under sections 552.108(b)(1) and 552.108(b)(2). Upon review, we find the county makes no arguments and therefore has not demonstrated how release of the information you have marked would interfere with law enforcement or crime prevention. Further, the county has not demonstrated that the information at issue relates to a concluded case that did not result in a conviction or deferred adjudication. Therefore, you may not withhold the information at issue supplied by the Ellis County Fire Marshal under section 552.108(b)(1) or section 552.108(b)(2).

You claim subsections 552.108(a)(2) and 552.108(b)(2) for information provided by the Ellis County Sheriff's Department. Subsections 552.108(a)(2) and 552.108(b)(2) protect 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) or subsection 552.108(b)(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. *Id.* You state report numbers 05-18568 and 06-05612 resulted in convictions or deferred adjudication. Accordingly, you have not demonstrated that section 552.108(a)(2) is applicable to these reports and the county may not withhold them on this basis.

You state the remaining information you have marked in the information supplied by the Ellis County Sheriff's Department pertains to closed cases that did not result in conviction or deferred adjudication. Based on your representation, we conclude that the county may withhold the information you have marked under section 552.108(a)(2).

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). The purpose of section 552.130 is to protect the privacy interests of individuals. Since, as noted above, the right of privacy lapses at death, Texas motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491 (Texas does not recognize relational or derivative right of privacy). Thus, to the extent a living person has an ownership interest in the information you have marked, and the additional information we have marked, the county must withhold this information under section 552.130. Conversely, if no living person owns an interest in the vehicle at issue, the county must release the marked information.

You claim section 552.147 of the Government Code for portions of the remaining information. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. We note some of the social security numbers you have marked pertain to deceased individuals. By its terms, section 552.147 is not applicable to the social security number of a deceased individual. Therefore, the county may only withhold social security numbers pertaining to living persons under section 552.147.

In summary, the county must withhold the information we have marked under section 552.101 in conjunction with section 58.007 of the Family Code. The county may withhold the information you have marked in the closed cases that did not result in conviction or deferred adjudication submitted by the Ellis County Sheriff's Department under section 552.108(a)(2). To the extent a living person has an ownership interest in the motor vehicle information, the county must withhold the marked motor vehicle information under section 552.130. The county may only withhold social security numbers pertaining to living persons under section 552.147. The remaining information must be released.

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.

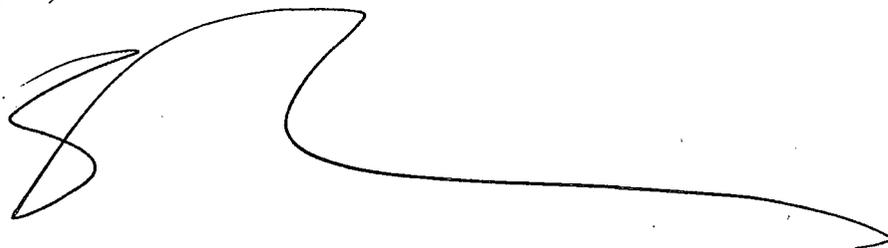
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney 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,



Chris Schulz
Assistant Attorney General
Open Records Division



CS/cc

Ref: ID# 363253

Enc. Submitted documents

cc: Requestor
(w/o enclosures)