



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2010

Mr. Hardy Burke
Counsel to the Sheriff
Denton County Criminal District Attorney's Office
127 North Woodrow Lane
Denton, Texas 76205-6397

OR2010-01993

Dear Mr. Burke:

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# 369847.

The Denton County Sheriff's Office (the "sheriff") received three requests for a specified 9-1-1 call and related police reports. One of the requestors also seeks reports related to calls for service to a specified residence and address. You state you have no information responsive to a portion of the request.¹ You claim 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. We have also considered comments from an interested party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the sheriff's obligations under the Act. Section 552.301 of the Government Code prescribes procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Gov't Code § 552.301(e-1). The sheriff received the first requests for information on November 13, 2009. In conversations with this office, the sheriff states it did not send a copy of the written comments submitted to this office pursuant to subsection (e)(1)(A), or a copy of those comments with confidential information redacted, to the requestors. Thus, we conclude the sheriff failed to comply with the procedural requirements mandated by section 552.301(e-1).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision Nos. 319 (1982), 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code as an exception to disclosure of the submitted information, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 discretionary). Consequently, the sheriff may not withhold the submitted information under section 552.108 of the Government Code. However, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider your argument under section 552.101 for 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. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations or 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. In this instance, you assert one of the requests, in part, requires the sheriff to compile unspecified law enforcement records concerning the individual at issue. However, we note the request does not ask for a compilation of a named individual's criminal history, but rather for information related to a specified residence. Therefore, we determine that the present request does not implicate an individual's common-law right of privacy as contemplated in *Reporters Committee*, and no portion of the information at issue may be withheld on that basis.

You also claim the information related to the specified incident must be withheld on the basis of common-law privacy. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of the incident, the entire report must be withheld to protect the individual's privacy. You argue the information relating to the specified incident must be withheld in its entirety on the basis of common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Thus, the sheriff may not withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, we agree portions of the information at issue, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. We note the submitted audio recording also contains information that is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff must withhold the information we have marked in the submitted reports, as well as the information within the submitted audio recording we have noted, under section 552.101 in conjunction with common-law privacy.

We note portions of the remaining information may be subject to section 552.130 of the Government Code.² Section 552.130 provides in relevant part:

²The 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).

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

(2) a motor vehicle title or registration issued by an agency of this state[.]

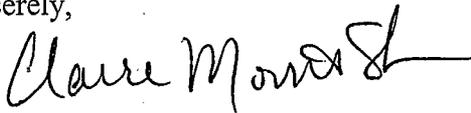
Gov't Code § 552.130(a)(1). We note section 552.130 does not apply to out-of-state motor vehicle record information. In this instance, we are unable to determine whether the information we have marked was issued by an agency of this state. Accordingly, to the extent the marked license plate number constitutes Texas motor vehicle record information, the sheriff must withhold it under section 552.130 of the Government Code.³

In summary, the sheriff must withhold the information we have marked, as well as information within the submitted audio recording, which we have noted, under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the marked license plate number constitutes Texas motor vehicle record information, it must be withheld under section 552.130 of the Government Code. 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 369847

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

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