



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 25, 2010

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

OR2010-07543

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# 380877.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all information involving a named individual for the past ten years, as well as all information involving a specified address from January 2003 to January 2006. You state you will release some information to the requestor. 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 representative sample of information.<sup>1</sup>

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

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<sup>1</sup>We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history record information 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, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the requestor seeks, in part, records pertaining to a named individual. We find that this request implicates the named individual's right to privacy. To the extent that the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. However, we note that you have submitted records that do not list the named individual as a suspect, arrestee, or defendant. This information may not be withheld as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Thus, we will consider your arguments against disclosure of this information.

Section 552.108 of the Government Code provides:

(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[.]

...

(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[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108 protects certain specific types of law enforcement information. Section 552.108(a)(1) is applicable if release of the information would interfere with a pending criminal investigation or prosecution. *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). Section 552.108(b)(1) is applicable to internal records of a law enforcement agency, the release of which would interfere with law enforcement and crime prevention. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body that raises section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the information related to report numbers 06-8451, 06-18229, 06-25527, and 08-32890 relate to pending criminal investigations. Based on this representation, we conclude that the release of report number 08-32890 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. App.—Houston [14<sup>th</sup> 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). We note, however, report number 06-25527 involves an alleged unauthorized use of a motor vehicle, a state jail felony, that occurred in 2006. The statute of limitations for this type of offense is three years. See Crim. Proc. Code art. 12.01 (all other felonies subject to three year limitations period). More than three years have elapsed since the events giving rise to the investigation in report number 06-25527, and you have not informed this office any criminal charges were filed within the limitations period. We further note report numbers 06-8451 and 06-18229 involve an alleged misdemeanor attempted theft and misdemeanor theft that each occurred in 2006. The statute of limitations for these types of offenses is two years. See Crim. Proc. Code art. 12.02 (misdemeanors subject to two year limitations period). More than two years have elapsed since the events giving rise to the investigations in report numbers 06-8451 and 06-18229, and you have not informed this office any criminal charges were filed within the limitations periods. Furthermore, you have not otherwise explained how release of report numbers 06-8451, 06-18229, and 06-25527 would interfere with the detection, investigation, or prosecution of crime. Thus, report numbers 06-8451, 06-18229, and 06-25527 may not be withheld under section 552.108(a)(1) or section 552.108(b)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. You state that the information related to report numbers 04-10392, 07-6620, and 09-5 pertain to cases that resulted in no conviction or deferred adjudication regarding the suspect. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

We note, however, that 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*, and includes a detailed description of the offense. Therefore, with the exception of basic information, the sheriff may withhold report number 08-32890 pursuant to section 552.108(a)(1) of the Government Code and report numbers 04-10392, 07-6620, and 09-5 pursuant to section 552.108(a)(2) of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. You claim the remaining reports contain information that constitutes CHRI. Upon review, portions of the remaining information, which we have marked, consist of CHRI that is confidential under chapter 411. Accordingly, the marked information must be withheld under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The remaining information does not reflect it was generated by the NCIC or TCIC. Consequently, we find you have not demonstrated how any of the remaining information constitutes CHRI for purposes of chapter 411, and no portion of this information may be withheld on this basis.

You raise section 552.101 in conjunction with common-law privacy for a portion of the remaining information. Common-law privacy also protects the types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide,

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<sup>2</sup>As our ruling is dispositive of this information, we need not address your remaining arguments against its disclosure.

and injuries to sexual organs. *See Indus. Found.*, 540 S.W.2d at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). 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 that report number 04-10392 must be withheld in its entirety on the basis of common-law privacy. As noted above, report number 04-10392 is excepted from disclosure under section 552.108(a)(2), with the exception of basic information. Upon review, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the basic information at issue must be withheld on the basis of common-law privacy. Nevertheless, we find some of the basic information in report number 04-10392 is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff must withhold the basic information we have marked in report number 04-10392 under section 552.101 in conjunction with common-law privacy. However, we find that none of the remaining basic information in report number 04-10392 is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining basic information in this report may be withheld under section 552.101 in conjunction with common-law privacy.

You raise section 552.130 of the Government Code for portions of the remaining information. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130.<sup>3</sup>

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold report number 08-32890 pursuant to section 552.108(a)(1) of the Government Code and incident report numbers 04-10392, 07-6620, and 09-5 pursuant to section 552.108(a)(2) of the Government Code. The sheriff must withhold the information we have marked under section 552.101 of the Government

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<sup>3</sup>We 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 driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Code in conjunction with federal law and chapter 411 of the Government Code. The sheriff must also withhold the basic information in report number 04-10392 we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>4</sup>

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](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 Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 380877

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note that the information being released contains social security numbers. 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.