



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2010

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

OR2010-07974

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# 381340.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for specified jail records of a named individual. You claim that 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.¹

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

¹We assume that the "representative sample" of records 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.

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.

Although you argue that the present request requires the sheriff to compile an individual's criminal history, the request is for specified jail records, not all criminal records involving an individual. Therefore, the sheriff may not withhold the requested information as a compilation of a private citizen's criminal history.

Next, we note portions of the submitted information are subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (a)(17). The submitted information includes receipts of payments to the sheriff, as well as court-filed documents. These documents are subject to subsections 552.022(a)(3) and 552.022(a)(17), respectively. Therefore, the sheriff may only withhold this information if it is confidential under "other law." Although the sheriff raises section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception that protect a governmental body's interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108).* As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold the information subject to section 552.022, which we have marked, under section 552.108. However, we note some of the information subject

to section 552.022 contains information subject to section 552.136 of the Government Code.² Because this section is “other law” for purposes of section 552.022, we consider its applicability to the information at issue.

Section 552.136 states 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.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we conclude the bank account numbers and routing numbers we marked must be withheld under section 552.136.³ The remaining information subject to section 552.022 must be released.

Next, we address your arguments to withhold the remaining information not subject to section 552.022. Section 552.108 of the Government Code 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the release of the remaining submitted information would interfere with a pending criminal case. Based on your representations, we conclude that section 552.108(a)(1) is generally applicable to this information. *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).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The sheriff must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision

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).

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 bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

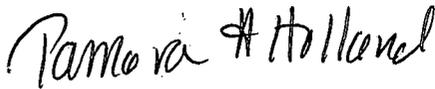
No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the sheriff may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.⁴

In summary, the sheriff must withhold the information we have marked under section 552.136 of the Government Code. The remaining information subject to section 552.022 of the Government Code, which we have marked, must be released. With the exception of basic information, which must be released, the sheriff may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 381340

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments.