



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2010-09403

Dear Ms. Lentz:

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# 384379.

The Williamson County Sheriff's Office (the "sheriff") received a request for information relating to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.136, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We initially note that the requestor does not seek access to any social security, Texas driver's license, Texas license plate, or vehicle identification numbers contained in the submitted records. Thus, to the extent that the submitted records contain those types of information, they are not responsive to this request. This decision does not address the public availability of the submitted information that is not responsive to this request, and the sheriff need not release such information in response to the request.

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 exception 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

(Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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. 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). We also find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note that information relating to routine traffic offenses is not private under section 552.101. *Cf. Gov't Code* § 411.082(2)(B).

The instant request is for unspecified law enforcement records relating to a named individual. Thus, this request requires the sheriff to compile the named individual's criminal history and thereby implicates his privacy interests. Therefore, to the extent that the sheriff maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We have marked CHRI the sheriff must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

The public availability of fingerprints is governed by chapter 560 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental

body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* §§ 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002(1)(A) (“A governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]”). We have marked fingerprints that must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Next, we address the sheriff’s claim under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” *Id.* § 552.108(a)(2). 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 have marked the information the sheriff seeks to withhold under section 552.108. You state that the marked information is related to a criminal investigation that did not result in a conviction or a deferred adjudication. You explain that the statute of limitations for the related offense has expired. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to the marked information.

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 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* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The rest of the information you have marked under section 552.108 may be withheld under section 552.108(a)(2).

We note that section 552.130 of the Government Code is applicable to some of the remaining information at issue.¹ This section excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1). We have marked information relating to a Texas driver’s license that must be withheld under section 552.130.

¹This office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

The sheriff also claims section 552.136 of the Government Code. This exception provides that “[n]otwithstanding any other provision of [the Act], 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We agree that the credit card numbers you have marked must be withheld under section 552.136.²

Lastly, we address the sheriff’s claim under section 552.151 of the Government Code. This section relates to a public employee or officer’s safety and provides in part:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.151. You have marked the information the sheriff seeks to withhold under section 552.151. You state that the marked information identifies an undercover narcotics officer employed by the sheriff’s office. You contend that release of the marked information would put the officer’s life at risk. Based on your representations, we conclude that the sheriff must withhold the marked information under section 552.151.

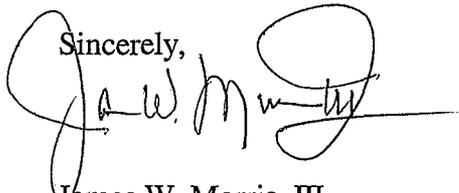
In summary: (1) to the extent that the sheriff maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the CHRI we have marked must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (3) the fingerprints we have marked must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code; (4) the information you have marked under section 552.108 of the Government Code may be withheld under section 552.108(a)(2), except for the basic information that must be released under section 552.108(c); (5) the Texas driver’s license information we have marked must be withheld under section 552.130 of the Government Code; (6) the credit card numbers you have marked must be withheld under section 552.136 of the Government Code; and (7) the information relating to the undercover narcotics officer you have marked must be withheld under section 552.151 of the Government Code. The rest of the responsive information must be released.

²We note that 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 a credit card number under section 552.136, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 384379

Enc: Submitted documents

c: Requestor
(w/o enclosures)