



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2010

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2010-09618

Dear Mr. Walker:

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# 384715 (Montgomery County ORR 2010-1561).

The Montgomery County Sheriff's Department (the "sheriff") received two requests for information related to a named individual and a specified address. The first request seeks all records related to the named individual at the specified address from July 15, 2009 to present; the second request seeks all calls for service at the specified address from April 8, 2005 to April 8, 2010. 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right to 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 demonstrated. *Id.* At 861-82. This office has found that 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) (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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private because it is not criminal history information, and therefore, may not be withheld under section 552.101 on that basis.

In this instance, the first request is for all records pertaining to the named individual. We find the first request requires the sheriff to compile unspecified law enforcement records concerning the named individual. We find the first request implicates the named individual's privacy rights. Thus, to the extent the sheriff maintains law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note that the second request seeks calls to a specified address. We find the second request does not implicate any individual's right to privacy for purposes of *Reporters Committee*. Accordingly, the sheriff may not withhold any of the submitted information under section 552.101 of the Government Code on that basis from the second requestor. We also note that you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of the individual's criminal history. Accordingly, we will address your remaining arguments under sections 552.101 and 552.108 of the Government Code.

You seek to withhold Exhibit B-2 in its entirety under section 552.101 in conjunction with common-law privacy. Common-law privacy also protects other types of information. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. *See Indus. Found.* 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although you seek to withhold the information in Exhibit B-2 in its entirety, you have not demonstrated, nor does it appear, that this is a situation where the information at issue must be withheld in its entirety on the basis of common-law privacy. However, we agree that some of the information at issue is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the sheriff must withhold the information we have marked in Exhibit B-2 under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated the remaining information in Exhibit B-2 is highly intimate or embarrassing and not of legitimate public concern. Therefore, no portion of the

remaining information in Exhibit B-2 may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(1) 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 inform us that the information in Exhibit B-1 relates to a pending criminal cause of action. Further, you state that release of this information would interfere with the prosecution of the crime. Based on these representations and our review, we conclude that section 552.108(a)(1) is applicable to the information in Exhibit B-1. *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, and you acknowledge, 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 W.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff may withhold the information in Exhibit B-1 under section 552.108(a)(1) of the Government Code.

We note that the remaining information contains Texas motor vehicle record information, which we have marked. Section 552.130 excepts from disclosure information related 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.¹ *See* Gov’t Code § 552.130(a)(1), (2). The sheriff must generally withhold the information we have marked under section 552.130 of the Government Code.² However, some of the information we have marked under section 552.130 belongs to the first requestor’s client. Section 552.023(a) of the Government Code states that a person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person’s privacy interests. Accordingly, pursuant to section 552.023

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We 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 numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

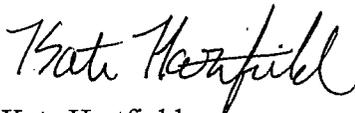
of the Government Code, the first requestor has a special right of access to the information pertaining to her client that we have marked under section 552.130 of the Government Code, and this information must be released to her.

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 of the Government Code in conjunction with common-law privacy from the first requestor. The sheriff must withhold the information we have marked in Exhibit B-2 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold Exhibit B-1 under section 552.108(a)(1). The sheriff must generally withhold the information we have marked under section 552.130 of the Government Code. However, the first requestor has a special right of access to the information we have marked under this sections that pertains to her client pursuant to section 552.023 of the Government Code. The remaining information must be released.³

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

³We note 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. *See* Gov't Code § 552.147. However, the first requestor has a right of access to her client's social security number and it may not be withheld from her on this basis. *See id.* § 552.023(a).

Ref: ID# 384715

Enc. Submitted documents

c: Requestors
(w/o enclosures)