



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2010

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

OR2010-12164

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# 390028.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all records related to ten named individuals for a specified time period. You state you have released some information to the requestor. You indicate you have no information relating to one of the named individuals.¹ 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.²

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

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 if it (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 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. 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). Moreover, we find 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 and may not be withheld under section 552.101 on that basis.

The present request requires the sheriff to compile unspecified law enforcement records concerning the individuals named in the request, thus implicating the named individuals’ rights to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted several reports that do not list any of the named individuals as a suspect, arrestee, or criminal defendant. Thus, this information is not part of a criminal history compilation and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address your arguments against the disclosure of this information.

Section 552.101 also encompasses information that other statutes makes confidential, such as section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. You state that offense report 08-29265 relates to juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). You do not inform us, and it does not appear, that any of the exceptions in section 58.007 apply to the information in this report. Therefore, the sheriff must withhold offense report 08-29265 under section 552.101 in conjunction with section 58.007 of the Family Code.

You seek to withhold offense report 09-18424 in its entirety under section 552.101 in conjunction with common-law privacy. Common-law privacy also protects information other than criminal history compilations. The types of information considered intimate or 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. *See Indus. Found.*, 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 that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual’s privacy. In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the incident at issue in offense report 09-18424. Therefore, withholding only the individual’s identity or certain details of the incident from the requestor would not preserve the individual’s common-law right of privacy. Therefore, the sheriff must withhold offense report 09-18424 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state offense reports 04-980, 08-17818, and 08-25833 are related to pending investigations and that release of this information would interfere with the prosecutions and investigations of these cases. We note that offense report 04-980 pertains to a burglary of a habitation that occurred on January 16, 2004. You state the sheriff received this request for information on May 24, 2010. The statute of limitations for this offense is five years. *See* Penal Code § 30.02(c)(2) (burglary is felony of second degree if committed in habitation); Crim. Proc. Code art. 12.01(4)(B)

(indictment for burglary may be presented within five years from date of commission of the offense, and not afterward). Thus, the limitations period had passed for offense report 04-980 when the sheriff received the present request. You have not informed this office that any criminal charges were filed within the limitations period. Furthermore, you have not otherwise explained how release of offense report 04-980 would interfere with the detection, investigation, or prosecution of crime. Thus, offense report 04-980 may not be withheld under section 552.108(a)(1) of the Government Code. As you raise no further exceptions to the disclosure of offense report 04-980, it must be released. Upon review, we find section 552.108(a)(1) is applicable to offense reports 08-17818 and 08-25833. *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(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[.]” Gov’t Code §552.108(a)(2). You state that offense reports 07-10968 and 10-1497 are closed cases that relate to the detection, investigation, or prosecution of crimes that did not result in conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude section 552.108(a)(2) of the Government Code is applicable to offense reports 07-10968 and 10-1497.

However, 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*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold offense reports 08-17818 and 08-25833 under section 552.108(a)(1) of the Government Code and offense reports 07-10968 and 10-1497 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold offense report 08-29265 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The sheriff must withhold offense report 09-18424 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold offense reports 08-17818 and 08-25833 under section 552.108(a)(1) of the Government Code and offense reports 07-10968 and 10-1497 under section 552.108(a)(2) of the Government Code. The remaining information must be released. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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/em

Ref: ID# 390028

Enc. Submitted documents

c: Requestor
(w/o enclosures)