



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2010

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

OR2010-12186

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# 390222.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all records, including jail papers, case reports, call slips, and audio or video recordings, pertaining to a named individual, including records related to an specified incident that occurred on March 12, 2009. You provide documentation reflecting the sheriff has released a portion of the requested information and does not have a case report, call slip, or audio or video recordings related to the specified incident.¹ You claim the requested 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 representative sample of information.²

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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); 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 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 satisfied. *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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all of the sheriff's records involving a named individual. This part of the request requires the sheriff to compile the named individual's criminal history and thus implicates the named individual's right to privacy. However, we find the part of the request that seeks information pertaining to the specified incident does not implicate the named individual's privacy interests. Accordingly, the submitted information that pertains to the specified incident may not be withheld as part of a criminal history compilation. However, to the extent the sheriff maintains other 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. We will address your arguments against disclosure of the three submitted jail packets which pertain to the March 13, 2009, incident.

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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide documentation reflecting that submitted jail packet numbers 0902824, 0903641, and 1003596 pertain to charges arising from the specified incident, and that these charges are currently pending prosecution. Based on these representations and our review, we determine release of most of these jail packets at this time 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. 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).

However, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127

(1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff may withhold jail packet numbers 0902824, 0903641, and 1003596 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the sheriff maintains law enforcement records that do not pertain to the specified incident and that depict 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. With the exception of basic information that must be released, the sheriff may withhold jail packet numbers 0902824, 0903641, and 1003596 under section 552.108(a)(1) of the Government Code. 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 390222

Enc. Submitted documents

cc: Requestor
(w/o enclosures)