



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 3, 2010

Ms. M. Ann Montgomery  
Assistant Ellis County & District Attorney  
1201 North Highway 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2010-13465

Dear Ms. Montgomery:

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# 392498.

The Ellis County Sheriff's Office (the "sheriff") received a request for all records pertaining to a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. 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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the sheriff to compile unspecified law enforcement records concerning the named individual, thus implicating the named individual's right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

You submitted two reports that do not list the named individual as a suspect, arrestee, or criminal defendant. You assert the information you marked in report number 09-20100 is excepted 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate the information you marked in report number 09-20100 pertains to a closed investigation that did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree the sheriff may withhold the information you marked under section 552.108(a)(2).<sup>1</sup>

You also assert report numbers 09-16325 and 09-20100 contain information that is excepted from disclosure under sections 552.130 and 552.147 of the Government Code. Section 552.130 excepts from disclosure information that "relates 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." Gov't Code § 552.130. Section 552.147(a) provides that the social security number of a living person is excepted from required public disclosure under the Act. *Id.* § 552.147(a). Upon review, however, we find these reports do not contain Texas motor vehicle record information or social security numbers; thus, the sheriff may not withhold any information in these reports under section 552.130 or section 552.147.

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 any such

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<sup>1</sup>As our ruling is dispositive, we need not address your argument under section 552.108(b)(2) of the Government Code.

information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff may withhold the information you marked in report number 09-20100 under section 552.108(a)(2) of the Government Code. The remaining information must be released.

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](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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/em

Ref: ID# 392498

Enc. Submitted documents

c: Requestor  
(w/o enclosures)