



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2010

Mr. David A. Mendoza
Assistant District Attorney
Hays County
110 East Martin Luther King Drive
San Marcos, Texas 78666

OR2010-14676

Dear Mr. Mendoza:

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# 394668.

The Hays County District Attorney's Office (the "district attorney") received a request for all reports or records regarding two named individuals. You state the district attorney has released some of the requested information to the requestor. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. 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). 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 seeks information pertaining to two named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the district attorney maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the district attorney must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, that you have submitted report C10-13111, in which the named individuals are not listed as suspects, arrestees, or criminal defendants. This report is not part of a criminal history compilation and thus does not implicate the individuals' right to privacy. Accordingly, we will address your argument against disclosure of report C10-13111.

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 state report C10-13111 relates to a pending criminal case. Based on this representation and our review of the information at issue, we conclude that the district attorney has demonstrated that release of report C10-13111 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 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 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 S.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, which you state you have released, the district attorney may withhold report C10-13111 under section 552.108(a)(1) of the Government Code.

In summary, to the extent the district attorney maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the district attorney must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the district attorney may withhold report C10-13111 under section 552.108 of the Government Code.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 394668

Enc. Submitted documents

c: Requestor
(w/o enclosures)