



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2010

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

OR2010-14749

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# 394793.

The Fort Bend County Sheriff's Office (the "sheriff") received two requests from the same requestor for all 9-1-1 calls during specified time periods for four named individuals at two specified addresses and a 9-1-1 call concerning a specified incident. You state the sheriff has released some of the requested information. You claim that the requested 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.<sup>1</sup>

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. This section encompasses the doctrine of common-law 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 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

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<sup>1</sup>We assume that 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.

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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks 9-1-1 calls for four named individuals at two specified addresses. This request requires the sheriff to compile the named individuals' criminal histories. We find this request for unspecified law enforcement records implicates 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 such information under section 552.101 in conjunction with common-law privacy.

However, you have submitted information which does not identify the named individuals as suspects, arrestees, or criminal defendants. Further, you have submitted information pertaining to the incident specified in the request. This information does not implicate the privacy interests of the named individuals and, thus, may not be withheld as a compilation of the individuals' criminal histories on the basis of common-law privacy. Accordingly, we will address your arguments for this information.

Next, we note reports numbers 09-15318 and 05-3615 are subject to a previous request for information, in response to which this office issued Open Records Letter No. 2010-06200 (2010). In that decision, we ruled, in part, that the sheriff must withhold report number 09-15318 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and, with the exception of basic information, may withhold report number 05-3615 under section 552.108(a)(2) of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed for these reports, the sheriff may continue to rely on that ruling as a previous determination for these cases and withhold or release these reports in accordance with that prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Although some of the remaining information was also ruled upon in Open Records Letter No. 2010-06200, we note that circumstances have changed for that information and, thus, Open Records Letter No. 2010-06200 may not be used as a previous determination for any of the remaining information. Accordingly, we address your arguments against disclosure for the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. See Gov't Code 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. See *id.* §§ 552.108(a)(2), .302(e)(1)(A). You state that report numbers 04-24372, 05-20504, 06-8921, 07-162, 07-25085, 07-28074, 08-22390, and 08-14409 pertain to investigations that did not result in convictions or deferred adjudications. Based on your representation and our review of the information at issue, we conclude that the sheriff has demonstrated that section 552.108(a)(2) is applicable to these reports. Therefore, we conclude that the sheriff may generally withhold reports 04-24372, 05-20504, 06-8921, 07-162, 07-25085, 07-28074, 08-22390, and 08-14409 under section 552.108(a)(2) of the Government Code.

However, as you acknowledge, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See *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); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information described in *Houston Chronicle* does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. Therefore, with the exception of basic information, the sheriff may withhold incident reports numbers 04-24372, 05-20504, 06-8921, 07-162, 07-25085, 07-28074, 08-22390, and 08-14409 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

You claim some of the basic information is confidential pursuant to common-law privacy. As previously noted, section 552.101 of the Government Code 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. See *Indus Found.*, 540 S.W.2d at 668. The types of information considered intimate and 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. *Id.* at 683.

Upon review, we find that a portion of the basic information, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, the sheriff must withhold this information under section 552.101 on the basis of common-law privacy. However, we find you have failed to show how the remaining information at issue is highly intimate or embarrassing information of no legitimate public interest. Therefore, none of the

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

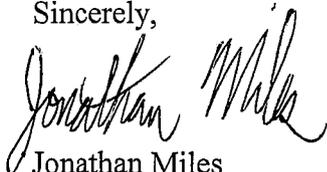
remaining information be withheld under either section 552.101 of the Government Code in conjunction with common-law privacy.

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 may continue to rely on Open Records Letter No. 2010-06200 for report numbers 09-15318 and 05-3615 and withhold or release those reports in accordance with that ruling. With the exception of basic information, the sheriff may withhold report numbers 04-24372, 05-20504, 06-8921, 07-162, 07-25085, 07-28074, 08-22390, and 08-14409 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the information we have marked from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/eeg

Ref: ID# 394793

Enc. Submitted documents

c: Requestor  
(w/o enclosures)