



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2011

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

OR2011-07556

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# 418891.

The Hays County Sheriff's Office (the "sheriff") received a request for "jail release information" including mug shots, names, and offenses charged for a specified time period; any documentation regarding the sheriff's policy on the release of information that may interfere with the detection, investigation, and prosecution of crime; and any documentation regarding the request for mug shots made by a named individual on or about a specified date. You claim the submitted 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.<sup>1</sup>

Initially, you state "the request for any documentation regarding the request for mug shots made by [the named individual on or about the specified date] is a matter that was resolved by" a previous ruling issued by this office. In Open Records Letter No. 2011-03853 (2011), we concluded the sheriff must withhold the portion of the jail log we marked under

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<sup>1</sup>We 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 in conjunction with section 261.201 of the Family Code, and, with the exception of the basic information, may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code. We have no indication that the law, facts, and circumstances on which that ruling was based have changed. *See* Gov't Code §§ 552.007, .301(f) (governmental body is prohibited from asking for decision if governmental body previously requested and received a determination concerning the precise information at issue and attorney general determined information is not excepted from disclosure). Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the sheriff must continue to rely on Open Records Letter No. 2011-03853 as a previous determination and withhold or release the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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).

You assert a portion of the request requires the sheriff to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision No. 561 at 8-9 (1990). Therefore, while the sheriff is not required to answer general questions or create documents that did not exist at the time of the request, documents from which this information may be derived are responsive to this request. We note the request does not specifically ask a question, but rather seeks any documentation regarding how a specific decision may have been reached. Accordingly, to the extent any such documentation exists, it would be responsive to the request.

Although you state the sheriff submitted a representative sample of information, no portion of the submitted information pertains to the request for documentation regarding the sheriff's policy on the release of information that may interfere with the detection, investigation, and prosecution of crime. Thus, we find the submitted information is not representative of the information sought in that category of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion 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. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Accordingly, to the extent the sheriff maintains information responsive to that portion of the request that existed on the date the request was received, we assume you have released it.

If you have not released it, you must do so at this time. *Id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The doctrine of common-law privacy protects a compilation of an individual’s criminal history, which 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) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

You argue the instant request for information seeks a compilation of several individuals’ criminal histories and mug shots. However, in this instance, the requestor does not seek all reports pertaining to a particular named individual. Rather, the requestor seeks all “jail release information” for a certain date range. Thus, the instant request does not require the sheriff to compile any named individual’s criminal history and does not implicate any individual’s right to privacy. Accordingly, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of an individual’s criminal history.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the information at issue was used or developed in investigations under section 261.201(a). *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Thus, we find this information falls within the scope of section 261.201 of the Family Code. You have not indicated the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the information we have marked is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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(a)(1) 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information relates to pending investigations and prosecutions of criminal cases. Based upon your representation, we conclude release of the remaining information 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) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find section 552.108(a)(1) of the Government Code is applicable to the remaining information.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). We note basic information includes, among other items, the arrestee’s name, race, sex, and address; the place of arrest; and the offense for which the suspect was arrested. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the sheriff may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

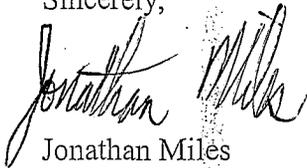
In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the sheriff must continue to rely on Open Records

Letter No. 2011-03853 as a previous determination and withhold or release the information in accordance with that ruling. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, the sheriff may withhold the remaining submitted information under section 552.108(a)(1) 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](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/em

Ref: ID# 418891

Enc. Submitted documents

c: Requestor  
(w/o enclosures)